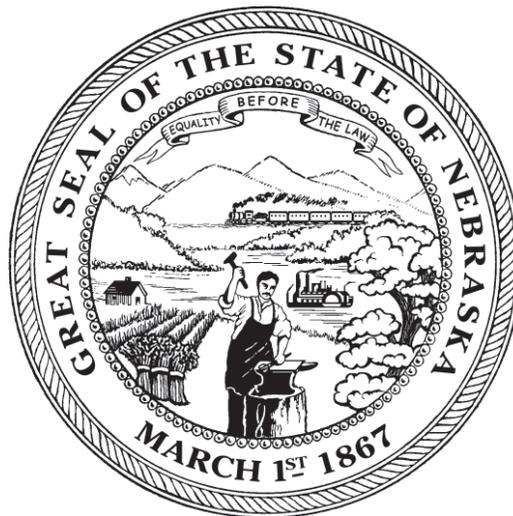


REVISED STATUTES OF NEBRASKA

REISSUE OF VOLUME 4
2018

COMPRISING ALL THE STATUTORY LAWS OF A
GENERAL NATURE IN FORCE AT DATE OF
PUBLICATION ON THE SUBJECTS ASSIGNED
TO CHAPTERS 61 TO 70, INCLUSIVE



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Revisor of Statutes

For the benefit of the
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I, Joanne M. Pepperl, Revisor of Statutes, do hereby certify that the Reissue of Volume 4 of the Revised Statutes of Nebraska, 2018, contains all of the laws set forth in Chapters 61 to 70, appearing in Volume 4, Revised Statutes of Nebraska, 2009, as amended and supplemented by the One Hundred First Legislature, Second Session, 2010, through the One Hundred Fifth Legislature, Second Session, 2018, of the Nebraska Legislature, in force at the time of publication hereof.

Joanne M. Pepperl
Revisor of Statutes

Lincoln, Nebraska
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CHAPTER 61

NATURAL RESOURCES

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61-201 Director of Natural Resources; qualifications.

The Director of Natural Resources shall be qualified by training and business experience to manage and supervise the Department of Natural Resources. The director shall be a professional engineer as provided in the Engineers and Architects Regulation Act and have had at least five years' experience in a position of responsibility in irrigation work.

Source: Laws 1957, c. 365, § 19, p. 1241; Laws 1959, c. 219, § 2, p. 767; Laws 1969, c. 386, § 1, p. 1355; Laws 1997, LB 622, § 75; R.S.1943, (1998), § 46-701; Laws 2000, LB 900, § 1.

Cross References

Engineers and Architects Regulation Act, see section 81-3401.

61-202 Director of Natural Resources; employment of personnel.

The Director of Natural Resources may employ such personnel, including legal and technical advisors, as necessary to carry out the duties required of the director.

Source: Laws 1957, c. 365, § 20, p. 1241; R.S.1943, (1998), § 46-702; Laws 2000, LB 900, § 2.

61-203 Director of Natural Resources; seal; certified copies of records; admissibility as evidence.

The Director of Natural Resources shall adopt a seal. Copies of all records or other instruments in the Department of Natural Resources when certified by the department as true copies and bearing the seal thereof shall be received in any court as prima facie evidence of the original record or instruments.

Source: Laws 1957, c. 365, § 21, p. 1241; R.S.1943, (1998), § 46-703; Laws 2000, LB 900, § 3.

61-204 Department of Natural Resources; rules and regulations.

(1) The Director of Natural Resources may adopt and promulgate rules and regulations for the Department of Natural Resources except to the extent such power is statutorily granted to the Nebraska Natural Resources Commission. The director shall administer rules and regulations adopted and promulgated by the commission.

(2) The rules, regulations, and orders of the Director of Water Resources, the Department of Water Resources, and the Nebraska Natural Resources Commission shall remain in effect unless changed or eliminated by the Director of Natural Resources or the Department of Natural Resources or by the commission to the extent such power is statutorily granted to the commission.

Source: Laws 1957, c. 365, § 22, p. 1241; R.S.1943, (1998), § 46-704; Laws 2000, LB 900, § 4.

61-205 Department of Natural Resources; general grant of authority.

The Department of Natural Resources shall exercise the powers and perform the duties assigned to the Department of Water Resources prior to July 1, 2000. The Department of Natural Resources shall exercise the powers and perform the duties assigned to the Nebraska Natural Resources Commission prior to July 1, 2000, except as otherwise specifically provided.

The Director of Natural Resources and his or her duly authorized assistants shall have access at all reasonable times to all dams, reservoirs, hydroelectric plants, water measuring devices, and headgates, and other devices for diverting water, for the purpose of performing the duties assigned to the department.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 1, p. 834; C.S.1922, § 8420; C.S.1929, § 81-6301; R.S.1943, § 46-208; Laws 1973, LB 186, § 1; R.S.1943, (1998), § 46-208; Laws 2000, LB 900, § 5; Laws 2006, LB 1226, § 29.

Department is the successor of prior boards dealing with irrigation. State v. Nielsen, 163 Neb. 372, 79 N.W.2d 721 (1956).

Under former law, Department of Roads and Irrigation exercised powers and functions of former Board of Irrigation. In re Claim Affidavit of Parsons, 148 Neb. 239, 27 N.W.2d 190 (1947).

61-206 Department of Natural Resources; jurisdiction; rules; hearings; orders; powers and duties.

(1) The Department of Natural Resources is given jurisdiction over all matters pertaining to water rights for irrigation, power, or other useful purposes except as such jurisdiction is specifically limited by statute. Such department shall adopt and promulgate rules and regulations governing matters coming before it. It may refuse to allow any water to be used by claimants until their rights have been determined and made of record. It may request informa-

tion relative to irrigation and water power works from any county, irrigation, or power officers and from any other persons. It may have hearings on complaints, petitions, or applications in connection with any of such matters. Such hearings shall be had at the time and place designated by the department. The department shall have power to certify official acts, compel attendance of witnesses, take testimony by deposition as in suits at law, and examine books, papers, documents, and records of any county, party, or parties interested in any of the matters mentioned in this section or have such examinations made by its qualified representative and shall make and preserve a true and complete transcript of its proceedings and hearings. If a final decision is made without a hearing, a hearing shall be held at the request of any party to the proceeding if the request is made within thirty days after the decision is rendered. If a hearing is held at the request of one or more parties, the department may require each such requesting party and each person who requests to be made a party to such hearing to pay the proportional share of the cost of such transcript. Upon any hearing, the department shall receive any evidence relevant to the matter under investigation and the burden of proof shall be upon the person making the complaint, petition, and application. After such hearing and investigation, the department shall render a decision in the premises in writing and shall issue such order or orders duly certified as it may deem necessary.

(2) The department shall serve as the official agency of the state in connection with water resources development, soil and water conservation, flood prevention, watershed protection, and flood control.

(3) The department shall:

(a) Offer assistance as appropriate to the supervisors or directors of any subdivision of government with responsibilities in the area of natural resources conservation, development, and use in the carrying out of any of their powers and programs;

(b) Keep the supervisors or directors of each such subdivision informed of the activities and experience of all other such subdivisions and facilitate cooperation and an interchange of advice and experience between such subdivisions;

(c) Coordinate the programs of such subdivisions so far as this may be done by advice and consultation;

(d) Secure the cooperation and assistance of the United States, any of its agencies, and agencies of this state in the work of such subdivisions;

(e) Disseminate information throughout the state concerning the activities and programs of such subdivisions;

(f) Plan, develop, and promote the implementation of a comprehensive program of resource development, conservation, and utilization for the soil and water resources of this state in cooperation with other local, state, and federal agencies and organizations;

(g) When necessary for the proper administration of the functions of the department, rent or lease space outside the State Capitol; and

(h) Assist such local governmental organizations as villages, cities, counties, and natural resources districts in securing, planning, and developing informa-

tion on flood plains to be used in developing regulations and ordinances on proper use of these flood plains.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 14, p. 839; C.S.1922, § 8433; C.S.1929, § 81-6314; R.S.1943, § 46-209; Laws 1957, c. 197, § 1, p. 695; Laws 1959, c. 219, § 1, p. 766; Laws 1981, LB 109, § 1; Laws 1984, LB 897, § 2; Laws 1984, LB 1106, § 36; Laws 1991, LB 772, § 4; Laws 1995, LB 350, § 1; R.S.1943, (1998), § 46-209; Laws 2000, LB 900, § 6; Laws 2004, LB 962, § 102; Laws 2008, LB727, § 1.

It is proper to join the Department of Natural Resources as a party to a hearing challenging the validity of the department's administration of water. In re 2007 Appropriations of Niobrara River Waters, 283 Neb. 629, 820 N.W.2d 44 (2012).

When relevant to a hearing before the Department of Natural Resources, the issue of abandonment or forfeiture should be heard and decided, regardless of the manner in which the proceeding was initiated. In re 2007 Appropriations of Niobrara River Waters, 283 Neb. 629, 820 N.W.2d 44 (2012).

The Department of Natural Resources does not lose jurisdiction to determine the validity of a power district's appropriation right even if an owner of a superior preference right who is challenging the validity of the power district's right has also initiated condemnation proceedings as outlined in section 70-672. In re 2007 Appropriations of Niobrara River Waters, 278 Neb. 137, 768 N.W.2d 420 (2009).

The Department of Natural Resources has no independent authority to regulate ground water users or administer ground water rights for the benefit of surface water appropriators. In re Complaint of Central Neb. Pub. Power, 270 Neb. 108, 699 N.W.2d 372 (2005).

Even in the absence of statutory authority, an administrative agency has the power to reconsider its own decisions. However, except where the motion to reconsider is one based on newly discovered evidence, the agency's power to reconsider its own

order exists only until the aggrieved party files an appeal or the statutory time has expired. A motion to reconsider filed with an administrative agency will not toll the statutory time for seeking judicial review. Where there has been no initial hearing, a motion for a hearing pursuant to this section cannot be considered one for rehearing. City of Lincoln v. Twin Platte NRD, 250 Neb. 452, 551 N.W.2d 6 (1996).

Department of Water Resources has exclusive original jurisdiction to hear and adjudicate all matters pertaining to water rights. Hickman v. Loup River P. P. Dist., 173 Neb. 428, 113 N.W.2d 617 (1962).

Department of Water Resources has exclusive original jurisdiction over application for allowance of water rights. Ainsworth Irr. Dist. v. Harms, 170 Neb. 228, 102 N.W.2d 429 (1960).

Department has jurisdiction over cancellation of water rights. State v. Nielsen, 163 Neb. 372, 79 N.W.2d 721 (1956).

Department cannot by rule extend time allowed to apply water to a beneficial use. North Loup River P. P. & I. Dist. v. Loup River P. P. Dist., 162 Neb. 22, 74 N.W.2d 863 (1956).

Under former law, appeal from decision refusing to cancel water rights on ground of nonuser may be properly taken to district court instead of directly to Supreme Court. State v. Oliver Bros., 119 Neb. 302, 228 N.W. 864 (1930).

61-207 Department of Natural Resources; decisions; appeal; time; procedure.

If any county, party, or parties interested in irrigation or water power work affected thereby are dissatisfied with the decision or with any order adopted, such dissatisfied county, party, or parties may appeal to the Court of Appeals to reverse, vacate, or modify the order complained of. The procedure to obtain such reversal, modification, or vacation of any such decision or order upon which a hearing has been had before the Department of Natural Resources shall be governed by the same provisions in force with reference to appeals and error proceedings from the district court. The evidence presented before the department as reported by its official stenographer and reduced to writing, together with a transcript of the record and pleadings upon which the decision is based, duly certified in such case under the seal of the department, shall constitute the complete record and the evidence upon which the case shall be presented to the appellate court. The time for perfecting such appeal shall be limited to thirty days after the rendition of such decision or order, and the appellate court shall advance such appeal to the head of its docket.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 15, p. 840; C.S.1922, § 8434; C.S.1929, § 81-6315; R.S.1943, § 46-210; Laws 1961, c. 227, § 1, p. 671; Laws 1973, LB 186, § 2; Laws 1984, LB 897, § 3; Laws 1987, LB 33, § 9; Laws 1991, LB 732, § 105; Laws 1992, LB 360, § 12; R.S.1943, (1998), § 46-210; Laws 2000, LB 900, § 7.

Cross References

Actions appealed to Supreme Court, advanced for argument, see section 25-1920.

A motion to reconsider filed with an administrative agency will not toll the statutory time for seeking judicial review. *City of Lincoln v. Twin Platte NRD*, 250 Neb. 452, 551 N.W.2d 6 (1996).

Regarding the granting of water diversion applications, the court's standard of review is to (1) search for errors appearing in the record; (2) determine whether the judgment conforms to law and whether it is supported by competent and relevant evidence; and (3) determine whether the director's action was arbitrary, capricious, or unreasonable. In re Applications A-15145, A-15146, A-15147, and A-15148, 230 Neb. 580, 433 N.W.2d 161 (1988).

The proper standard of review for the Supreme Court to follow in cases involving appeals from the Department of Water Resources under the provisions of this section is to search only for errors appearing in the record. In re Application U-2, 226 Neb. 594, 413 N.W.2d 290 (1987).

The proper standard of review for the Supreme Court to follow in cases involving appeals from the Department of Water Resources under the provisions of this section is to search only for errors appearing in the record; i.e., does the judgment conform to law, is it supported by competent and relevant evidence, and was the action neither arbitrary, capricious, nor unreasonable? To the extent that In re Applications A-15995 and A-16006, 223 Neb. 430, 390 N.W.2d 506 (1986), holds to the

contrary, it is overruled. In re Application A-15738, 226 Neb. 146, 410 N.W.2d 101 (1987).

Under former law, appeal lies from final order of Department of Water Resources directly to Supreme Court. *Ainsworth Irr. Dist. v. Harms*, 170 Neb. 228, 102 N.W.2d 429 (1960).

Evidence not offered at hearing has no place in bill of exceptions. *State v. Birdwood Irr. Dist.*, 154 Neb. 52, 46 N.W.2d 884 (1951).

Under former law, the Department of Roads and Irrigation was neither a necessary nor a proper party to a proceeding on appeal to secure a reversal, modification, or vacation of an order made and entered by it. *Cozad Ditch Co. v. Central Nebraska Public Power & Irr. Dist.*, 132 Neb. 547, 272 N.W. 560 (1937).

Under former law, appeal in proceedings before Department of Roads and Irrigation to cancel water right on ground of abandonment from decision refusing cancellation could be properly taken to district court instead of to Supreme Court. *State v. Oliver Bros.*, 119 Neb. 302, 228 N.W. 864 (1930).

The proper standard of review for an appellate court to follow in cases involving appeals from the Department of Water Resources under this section is to search only for errors appearing on the record, i.e., to determine whether the judgment conforms to law, is supported by relevant evidence, and is not arbitrary, capricious, or unreasonable. In re Applications A-17004 et al., 1 Neb. App. 974, 512 N.W.2d 392 (1993).

61-208 Department of Natural Resources; powers; survey of streams.

The Department of Natural Resources may make surveys of streams showing location of possible water power developments and irrigation projects.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 30, p. 845; C.S.1922, § 8449; C.S.1929, § 81-6330; R.S.1943, § 46-212; Laws 1984, LB 897, § 4; R.S.1943, (1998), § 46-212; Laws 2000, LB 900, § 8.

61-209 Department of Natural Resources; powers; water data collection; fee.

The Department of Natural Resources may conduct special projects for water data collection on behalf of other state agencies, political subdivisions, or federal agencies. Such data shall be public information. The department may charge a fee to cover in whole or in part the costs of collecting, analyzing, and publishing the data and such fees shall be deposited in the Department of Natural Resources Cash Fund.

Source: Laws 1983, LB 33, § 1; R.S.1943, (1998), § 46-212.01; Laws 2000, LB 900, § 9.

61-210 Department of Natural Resources Cash Fund; created; use; investment.

The Department of Natural Resources Cash Fund is created. The State Treasurer shall credit to such fund such money as is specifically appropriated or reappropriated by the Legislature. The State Treasurer shall also credit such fund with payments, if any, accepted for services rendered by the department and fees collected pursuant to subsection (6) of section 46-606 and section 61-209. The funds made available to the Department of Natural Resources by the United States, through the Natural Resources Conservation Service of the Department of Agriculture or through any other agencies, shall be credited to the fund by the State Treasurer. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska

Capital Expansion Act and the Nebraska State Funds Investment Act. The Department of Natural Resources shall allocate money from the fund to pay costs of the programs or activities of the department. The Director of Administrative Services, upon receipt of proper vouchers approved by the department, shall issue warrants on the fund, and the State Treasurer shall countersign and pay from, but never in excess of, the amounts to the credit of the fund. Transfers may be made from the fund to the General Fund at the direction of the Legislature.

Source: Laws 1937, c. 8, § 13, p. 109; C.S.Supp.,1941, § 2-1913; R.S. 1943, § 2-1547; Laws 1959, c. 6, § 25, p. 90; Laws 1969, c. 584, § 28, p. 2358; Laws 1973, LB 188, § 2; Laws 1987, LB 29, § 2; Laws 1995, LB 7, § 6; Laws 1999, LB 403, § 2; R.S.Supp.,1999, § 2-1547; Laws 2000, LB 900, § 10; Laws 2001, LB 667, § 26; Laws 2002, LB 458, § 8; Laws 2005, LB 335, § 81; Laws 2007, LB701, § 26; Laws 2009, First Spec. Sess., LB3, § 38.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

61-211 Department of Natural Resources; powers; measuring devices; gauge height reports; requirements; violation; penalty.

The Department of Natural Resources may direct managers or operators of interstate ditches to construct and maintain suitable measuring devices at or near the state line in Nebraska. A manager or operator shall within thirty days after receipt of notice from the department construct and complete installation of such a measuring device and shall furnish daily gauge height reports to the department from the beginning to the end of the irrigation season, in such form and manner as recommended by the department. Failure of any manager or operator of an interstate ditch to comply with this section shall be a Class V misdemeanor.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 31, p. 846; C.S.1922, § 8450; C.S.1929, § 81-6331; R.S.1943, § 46-213; Laws 1977, LB 40, § 256; Laws 1991, LB 276, § 1; R.S.1943, (1998), § 46-213; Laws 2000, LB 900, § 11.

61-212 Water divisions; denomination.

The State of Nebraska is hereby divided into two water divisions, denominated water division No. 1 and water division No. 2, respectively.

Source: Laws 1895, c. 69, § 1, p. 244; R.S.1913, § 3378; Laws 1919, c. 190, tit. VII, art. V, div. 1, § 10, p. 833; C.S.1922, § 8415; C.S.1929, § 46-510; R.S.1943, § 46-215; R.S.1943, (1998), § 46-215; Laws 2000, LB 900, § 12.

For administrative purposes, state is divided into two water divisions. *Ainsworth Irr. Dist. v. Bejot*, 170 Neb. 257, 102 N.W.2d 416 (1960).

61-213 Water division No. 1; boundaries.

Water division No. 1 shall consist of (1) all the lands of the state drained by the Platte Rivers and their tributaries lying west of the mouth of the Loup River and (2) all other lands lying south of the Platte and South Platte Rivers that

may be watered from other superficial or subterranean streams not tributary to the Platte River.

Source: Laws 1895, c. 69, § 2, p. 244; R.S.1913, § 3379; Laws 1919, c. 190, tit. VII, art. V, div. 1, § 11, p. 833; C.S.1922, § 8416; C.S.1929, § 46-511; R.S.1943, § 46-216; R.S.1943, (1998), § 46-216; Laws 2000, LB 900, § 13.

61-214 Water division No. 2; boundaries.

Water division No. 2 shall consist of (1) all lands that may be watered from the Loup, White, Niobrara, and Elkhorn Rivers and their tributaries and (2) all other lands of the state not included in any other water division.

Source: Laws 1895, c. 69, § 3, p. 245; Laws 1911, c. 153, § 2, p. 498; R.S.1913, § 3380; Laws 1919, c. 190, tit. VII, art. V, div. 1, § 12, p. 833; C.S.1922, § 8417; C.S.1929, § 46-512; R.S.1943, § 46-217; R.S.1943, (1998), § 46-217; Laws 2000, LB 900, § 14.

Snake River is within the Niobrara River basin or watershed. Ainsworth Irr. Dist. v. Bejot, 170 Neb. 257, 102 N.W.2d 416 (1960).

61-215 Water divisions; division supervisors.

There shall be one or more division supervisors acting for the Department of Natural Resources to administer the public water of the state in the water divisions created by section 61-212. Such a division supervisor, acting for the department, shall have the immediate direction and control of the distribution of water in such manner as directed by the department.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 3, p. 834; C.S.1922, § 8422; C.S.1929, § 81-6303; R.S.1943, § 46-218; Laws 1953, c. 157, § 1, p. 495; Laws 1987, LB 140, § 2; R.S.1943, (1998), § 46-218; Laws 2000, LB 900, § 15.

61-216 Water divisions; division supervisors; duties.

The division supervisor or supervisors shall, under the direction of the Department of Natural Resources, see that the laws relative to the distribution of water are executed in accordance with the rights of priority of appropriation.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 4, p. 835; C.S.1922, § 8423; C.S.1929, § 81-6304; R.S.1943, § 46-219; Laws 1953, c. 157, § 2, p. 495; R.S.1943, (1998), § 46-219; Laws 2000, LB 900, § 16.

Under former law, Department of Roads and Irrigation was authorized to shut and lock headgates of junior appropriators when there was not sufficient water to supply the needs of senior appropriators. Platte Valley Irr. Dist. v. Tilley, 142 Neb. 122, 5 N.W.2d 252 (1942).

Right to shut and lock headgates is not exclusive remedy. Farmers & Merchants' Irr. Co. v. Cozad Irr. Co., 65 Neb. 3, 90 N.W. 951 (1902).

61-217 Repealed. Laws 2010, LB 682, § 1.

61-218 Water Resources Cash Fund; created; use; investment; eligibility for funding; annual report; contents; Nebraska Environmental Trust Fund; grant application; use of funds; legislative intent; department; establish subaccount.

(1) The Water Resources Cash Fund is created. The fund shall be administered by the Department of Natural Resources. Any money in the fund available

for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The State Treasurer shall credit to the fund such money as is (a) transferred to the fund by the Legislature, (b) paid to the state as fees, deposits, payments, and repayments relating to the fund, both principal and interest, (c) donated as gifts, bequests, or other contributions to such fund from public or private entities, (d) made available by any department or agency of the United States if so directed by such department or agency, (e) allocated pursuant to section 81-15,175, and (f) received by the state for settlement of claims regarding Colorado's past use of water under the Republican River Compact.

(3) The fund shall be expended by the department (a) to aid management actions taken to reduce consumptive uses of water or to enhance streamflows or ground water recharge in river basins, subbasins, or reaches which are deemed by the department overappropriated pursuant to section 46-713 or fully appropriated pursuant to section 46-714 or are bound by an interstate compact or decree or a formal state contract or agreement, (b) for purposes of projects or proposals described in the grant application as set forth in subdivision (2)(h) of section 81-15,175, and (c) to the extent funds are not expended pursuant to subdivisions (a) and (b) of this subsection, the department may conduct a statewide assessment of short-term and long-term water management activities and funding needs to meet statutory requirements in sections 46-713 to 46-718 and 46-739 and any requirements of an interstate compact or decree or formal state contract or agreement. The fund shall not be used to pay for administrative expenses or any salaries for the department or any political subdivision.

(4) It is the intent of the Legislature that three million three hundred thousand dollars be transferred each fiscal year from the General Fund to the Water Resources Cash Fund for FY2011-12 through FY2018-19, except that for FY2012-13 it is the intent of the Legislature that four million seven hundred thousand dollars be transferred from the General Fund to the Water Resources Cash Fund. It is the intent of the Legislature that the State Treasurer credit any money received from any Republican River Compact settlement to the Water Resources Cash Fund in the fiscal year in which it is received.

(5)(a) Expenditures from the Water Resources Cash Fund may be made to natural resources districts eligible under subsection (3) of this section for activities to either achieve a sustainable balance of consumptive water uses or assure compliance with an interstate compact or decree or a formal state contract or agreement and shall require a match of local funding in an amount equal to or greater than forty percent of the total cost of carrying out the eligible activity. The department shall, no later than August 1 of each year, beginning in 2007, determine the amount of funding that will be made available to natural resources districts from the Water Resources Cash Fund and notify natural resources districts of this determination. The department shall adopt and promulgate rules and regulations governing application for and use of the Water Resources Cash Fund by natural resources districts. Such rules and regulations shall, at a minimum, include the following components:

(i) Require an explanation of how the planned activity will achieve a sustainable balance of consumptive water uses or will assure compliance with an interstate compact or decree or a formal state contract or agreement as required by section 46-715 and the controls, rules, and regulations designed to carry out the activity; and

(ii) A schedule of implementation of the activity or its components, including the local match as set forth in subdivision (5)(a) of this section.

(b) Any natural resources district that fails to implement and enforce its controls, rules, and regulations as required by section 46-715 shall not be eligible for funding from the Water Resources Cash Fund until it is determined by the department that compliance with the provisions required by section 46-715 has been established.

(6) The Department of Natural Resources shall submit electronically an annual report to the Legislature no later than October 1 of each year, beginning in the year 2007, that shall detail the use of the Water Resources Cash Fund in the previous year. The report shall provide:

(a) Details regarding the use and cost of activities carried out by the department; and

(b) Details regarding the use and cost of activities carried out by each natural resources district that received funds from the Water Resources Cash Fund.

(7)(a) Prior to the application deadline for fiscal year 2011-12, the Department of Natural Resources shall apply for a grant of nine million nine hundred thousand dollars from the Nebraska Environmental Trust Fund, to be paid out in three annual installments of three million three hundred thousand dollars. The purposes listed in the grant application shall be consistent with the uses of the Water Resources Cash Fund provided in this section and shall be used to aid management actions taken to reduce consumptive uses of water, to enhance streamflows, to recharge ground water, or to support wildlife habitat in any river basin determined to be fully appropriated pursuant to section 46-714 or designated as overappropriated pursuant to section 46-713.

(b) If the application is granted, funds received from such grant shall be remitted to the State Treasurer for credit to the Water Resources Cash Fund for the purpose of supporting the projects set forth in the grant application. The department shall include in its grant application documentation that the Legislature has authorized a transfer of three million three hundred thousand dollars from the General Fund into the Water Resources Cash Fund for each of fiscal years 2011-12 and 2012-13 and has stated its intent to transfer three million three hundred thousand dollars to the Water Resources Cash Fund for fiscal year 2013-14.

(c) It is the intent of the Legislature that the department apply for an additional three-year grant that would begin in fiscal year 2014-15 and an additional three-year grant from the Nebraska Environmental Trust Fund that would begin in fiscal year 2017-18 if the criteria established in subsection (4) of section 81-15,175 are achieved.

(8) The department shall establish a subaccount within the Water Resources Cash Fund for the accounting of all money received as a grant from the Nebraska Environmental Trust Fund as the result of an application made pursuant to subsection (7) of this section. At the end of each calendar month, the department shall calculate the amount of interest earnings accruing to the subaccount and shall notify the State Treasurer who shall then transfer a like amount from the Water Resources Cash Fund to the Nebraska Environmental Trust Fund.

Source: Laws 2007, LB701, § 25; Laws 2009, First Spec. Sess., LB3, § 39; Laws 2010, LB689, § 1; Laws 2010, LB993, § 1; Laws 2011,

LB229, § 1; Laws 2012, LB782, § 87; Laws 2012, LB950, § 1; Laws 2017, LB331, § 30; Laws 2018, LB945, § 15.
Effective date April 5, 2018.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

61-219 Repealed. Laws 2010, LB 683, § 1.

61-220 Repealed. Laws 2016, LB665, § 1.

61-221 Repealed. Laws 2016, LB665, § 1.

61-222 Water Sustainability Fund; created; use; investment.

The Water Sustainability Fund is created in the Department of Natural Resources. The fund shall be used in accordance with the provisions established in Laws 2014, LB1098, and for costs directly related to the administration of the fund.

The fund shall consist of money transferred to the fund by the Legislature, other funds as appropriated by the Legislature, and money donated as gifts, bequests, or other contributions from public or private entities. Funds made available by any department or agency of the United States may also be credited to the fund if so directed by such department or agency. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Investment earnings from investment of money in the fund shall be credited to the fund.

It is the intent of the Legislature that twenty-one million dollars be transferred from the General Fund to the Water Sustainability Fund in fiscal year 2014-15 and that eleven million dollars be transferred from the General Fund to the Water Sustainability Fund each fiscal year beginning in fiscal year 2015-16. It is the intent of the Legislature that three million dollars be transferred annually from the Water Sustainability Fund to the Nebraska Resources Development Fund in FY2015-16 and in FY2016-17.

Source: Laws 2014, LB906, § 7; Laws 2015, LB661, § 31.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

61-223 Water Sustainability Fund; legislative intent.

The Legislature finds that water sustainability programs, projects, and activities are complex, multiyear endeavors that require a stable source of state funding support in order for the required matching funds to be secured and for projects to be completed in a timely and successful manner. It is the intent of the Legislature that transfers of money from the General Fund to the Water Sustainability Fund be maintained at the level established in section 61-222 for a minimum of ten fiscal years.

Source: Laws 2015, LB661, § 20.

61-224 Critical Infrastructure Facilities Cash Fund; created; use; investment; transfers.

There is hereby created the Critical Infrastructure Facilities Cash Fund in the Department of Natural Resources. The fund shall consist of funds appropriated or transferred by the Legislature. The fund shall be used by the Department of Natural Resources to provide a grant to a natural resources district to offset costs related to soil and water improvements intended to protect critical infrastructure facilities within the district which includes military installations, transportation routes, and wastewater treatment facilities. Transfers may be made from the fund to the General Fund at the direction of the Legislature. The State Treasurer shall transfer three hundred eighty-four thousand two hundred twenty-two dollars plus any accrued interest through April 5, 2018, from the Critical Infrastructure Facilities Cash Fund to the General Fund on or before June 30, 2019, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services. Any money in the Critical Infrastructure Facilities Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act, and any interest earned by the fund shall be credited to the General Fund.

Source: Laws 2016, LB957, § 21; Laws 2018, LB945, § 16.
Effective date April 5, 2018.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

NEGOTIABLE INSTRUMENTS

CHAPTER 62 NEGOTIABLE INSTRUMENTS

Article.

1. Uniform Negotiable Instruments Law. Repealed.
2. Collection and Payment by Banks of Checks and Other Instruments. Repealed.
3. Miscellaneous Provisions. 62-301 to 62-310.

Cross References

Actions upon designation of defendant, see section 25-312.

Bonds of the state and political subdivisions, generally, see Chapter 10.

Checks, no account or insufficient funds, see sections 28-611 and 28-611.01.

Forgery, generally, see Chapter 28, article 6.

Insurance premium notes, sale or pledge before policy delivery prohibited, see section 44-369.

Interest, see Chapter 45.

Negotiable instruments, see Article 3, Uniform Commercial Code.

Receiving stolen property, see section 28-517.

Secured transactions, see Article 9, Uniform Commercial Code.

Theft by deception, see section 28-512.

Theft by unlawful taking or disposition, see section 28-511.

Warehouse receipts, see Article 7, Uniform Commercial Code.

ARTICLE 1

UNIFORM NEGOTIABLE INSTRUMENTS LAW

Section	
62-101.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-102.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-103.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-104.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-105.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-106.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-107.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-108.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-109.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-110.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-111.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-112.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-113.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-114.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-115.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-116.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-117.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-118.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-119.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-120.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-121.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-122.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-123.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-124.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-125.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-126.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-127.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-128.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-129.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-130.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-131.	Repealed. Laws 1963, c. 544, art. 10, § 1.

- 62-110 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 62-111 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 62-112 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 62-113 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 62-114 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 62-115 Repealed. Laws 1963, c. 544, art. 10, § 1.
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- 62-130 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 62-131 Repealed. Laws 1963, c. 544, art. 10, § 1.
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- 62-133 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 62-134 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 62-135 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 62-136 Repealed. Laws 1963, c. 544, art. 10, § 1.
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- 62-141 Repealed. Laws 1963, c. 544, art. 10, § 1.
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62-1,100 Repealed. Laws 1963, c. 544, art. 10, § 1.
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- 62-1,172 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 62-1,173 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 62-1,174 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 62-1,175 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 62-1,176 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 62-1,177 Repealed. Laws 1963, c. 544, art. 10, § 1.
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- 62-1,187 Repealed. Laws 1963, c. 544, art. 10, § 1.
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- 62-1,191 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 62-1,192 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 62-1,193 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 62-1,194 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-1,195 Repealed. Laws 1963, c. 544, art. 10, § 1.

ARTICLE 2

COLLECTION AND PAYMENT BY BANKS OF CHECKS AND OTHER INSTRUMENTS

Section	
62-201.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-202.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-203.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-204.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-205.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-206.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-207.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-208.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-209.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-210.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-211.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-212.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-213.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-214.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-215.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-216.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-217.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-218.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-219.	Repealed. Laws 1963, c. 544, art. 10, § 1.

62-201 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-202 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-203 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-204 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-205 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-206 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-207 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-208 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-209 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-210 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-211 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-212 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-213 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-214 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-215 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-216 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-217 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-218 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-219 Repealed. Laws 1963, c. 544, art. 10, § 1.

ARTICLE 3

MISCELLANEOUS PROVISIONS

Section	
62-301.	Holidays, enumerated; federal holiday schedule observed; exceptions; bank holidays.
62-301.01.	Holidays; transactions with bank; validity.
62-302.	Note for patent right; requirements; rights of subsequent parties.
62-303.	Tuition notes or contracts of business colleges; requirements; limitation upon negotiation.
62-304.	Violations; penalty.
62-305.	Tuition notes or contracts of business colleges; when void.
62-306.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-307.	Repealed. Laws 1949, c. 183, § 4.
62-308.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-309.	Repealed. Laws 1963, c. 544, art. 10, § 1.
62-310.	Repealed. Laws 1963, c. 544, art. 10, § 1.

62-301 Holidays, enumerated; federal holiday schedule observed; exceptions; bank holidays.

(1) For the purposes of the Uniform Commercial Code and section 62-301.01, the following days shall be holidays: New Year's Day, January 1; Birthday of Martin Luther King, Jr., the third Monday in January; President's Day, the third Monday in February; Arbor Day, the last Friday in April; Memorial Day, the last Monday in May; Independence Day, July 4; Labor Day, the first Monday in September; Columbus Day, the second Monday in October; Veterans Day, November 11, and the federally recognized holiday therefor, or either of them; Thanksgiving Day, the fourth Thursday in November; the day after Thanksgiving; and Christmas Day, December 25. If any such holiday falls on Sunday, the following Monday shall be a holiday. If the date designated by the state for observance of any legal holiday enumerated in this section, except Veterans Day, is different from the date of observance of such holiday pursuant to a federal holiday schedule, the federal holiday schedule shall be observed.

(2) Any bank doing business in this state may, by a brief written notice at, on, or near its front door, fully dispense with or restrict, to such extent as it may determine, the hours within which it will be open for business.

(3) Any bank may close on Saturday if it states such fact by a brief written notice at, on, or near its front door. When such bank will, in observance of such a notice, not be open for general business, such day shall, with respect to the particular bank, be the equivalent of a holiday as fully as if such day were listed in subsection (1) of this section, and any act authorized, required, or permitted to be performed at, by, or with respect to such bank which will, in observance of such notice, not be open for general business, acting in its own behalf or in any capacity whatever, may be performed on the next succeeding business day and no liability or loss of rights on the part of any person shall result from such delay.

(4) Any bank which, by the notice provided for by subsection (3) of this section, has created the holiday for such bank may, without destroying the legal effect of the holiday for it and solely for the convenience of its customers,

remain open all or part of such day in a limited fashion by treating every transaction with its customers on such day as though the transaction had taken place immediately upon the opening of such bank on the first following business day.

(5) Whenever the word bank is used in this section it includes building and loan association, savings and loan association, credit union, savings bank, trust company, investment company, and any other type of financial institution.

Source: Laws 1905, c. 83, art. 18, § 195, p. 434; Laws 1911, c. 69, § 1, p. 306; R.S.1913, § 5512; Laws 1915, c. 98, § 1, p. 241; Laws 1921, c. 186, § 1, p. 698; C.S.1922, § 4805; C.S.1929, § 62-1706; Laws 1941, c. 187, § 1, p. 755; C.S.Supp.,1941, § 62-1706; R.S.1943, § 62-301; Laws 1945, c. 252, § 1, p. 789; Laws 1951, c. 204, § 1, p. 761; Laws 1953, c. 224, § 1, p. 790; Laws 1967, c. 395, § 1, p. 1239; Laws 1969, c. 844, § 2, p. 3180; Laws 1973, LB 34, § 2; Laws 1974, LB 729, § 1; Laws 1975, LB 218, § 2; Laws 1978, LB 855, § 2; Laws 1986, LB 825, § 1; Laws 1988, LB 909, § 2; Laws 2002, LB 1094, § 14; Laws 2003, LB 131, § 32.

Cross References

Banks, days considered legal holidays, see section 8-1,129.

Thanksgiving, proclamation by Governor, see section 84-104.

Status as a holiday under this section has no effect upon court procedure. Taylor Dairy Products Co. v. Owen, 139 Neb. 603, 298 N.W. 332 (1941).

Judicial sale may be held on Lincoln's Birthday. Reid v. Keys, 112 Neb. 242, 199 N.W. 533 (1924).

62-301.01 Holidays; transactions with bank; validity.

Nothing in any law of this state shall in any manner affect the validity of, or render void or voidable any transaction by a bank in this state because done or performed during any time other than regular banking hours; *Provided*, that nothing herein shall be construed to compel any bank in this state which by law or custom is entitled to close at a fixed hour on any day or for the whole or any part of any holiday, to keep open for the transaction of business on any day after such hour, or on any holiday, except at its own option.

Source: Laws 1951, c. 204, § 2, p. 762.

62-302 Note for patent right; requirements; rights of subsequent parties.

A promissory note or other negotiable instrument, the consideration for which consists, in whole or in part, of the right to make, use or vend a patented invention, or an invention claimed to be patented, shall have written or printed prominently and legibly across the face thereof, and above the signature thereto, the words given for a patent right. Such instrument in the hands of any purchaser or holder shall be subject to the same defenses as it would be in the hands of the original owner or holder, and any person who purchases or becomes the holder of a promissory note or other negotiable instrument, knowing it to have been given for the consideration aforesaid, shall hold the same subject to such defenses, although the words given for a patent right are not written or printed upon its face.

Source: Laws 1905, c. 83, art. 19, § 196, p. 434; R.S.1913, § 5513; C.S.1922, § 4806; C.S.1929, § 62-1707; R.S.1943, § 62-302.

Where note given for patent right is not so endorsed, it is a bona fide holder. Benton v. Sikyta, 84 Neb. 808, 122 N.W. 61 defense between the original parties, or against one who is not a (1909).

62-303 Tuition notes or contracts of business colleges; requirements; limitation upon negotiation.

It shall be unlawful for any proprietor, officer, agent or representative of any business college, or the business or commercial department of any school doing business within the State of Nebraska, or without the state when operating or soliciting within the state, to contract for or receive for tuition or scholarship a negotiable note or negotiable contract, unless such negotiable note or notes or negotiable contract shall have printed in red ink prominently and legibly and in twenty-four point bold type diagonally across the face thereof, and above the signatures thereto, the words negotiable note given for tuition if a note, or the words negotiable contract note given for tuition and scholarship, if a contract, and unless a copy of said instrument shall be delivered to the makers thereof at the time of signing the same. It shall be unlawful for any such proprietor, agent or representative of any such school or department to sell or dispose of any such negotiable note or negotiable contract note, received in payment for tuition or scholarship, prior to three days from the entrance and personal registration of the student, for whom the same was purchased, in the matriculation register at the place of the location of the school or department.

Source: Laws 1915, c. 220, § 1, p. 489; C.S.1922, § 4807; C.S.1929, § 62-1708; R.S.1943, § 62-303; Laws 1947, c. 212, § 1, p. 693.

Cross References

Private postsecondary career school, contracts and evidence of indebtedness, see section 85-1645 et seq.

Foreign corporation soliciting and carrying on business in this state cannot enforce contract entered into and valid in another state if contract growing out of transaction is contrary to local laws. Refrigeration & Air Conditioning Institute, Inc. v. Hilyard, 146 Neb. 42, 18 N.W.2d 548 (1945).

Note for tuition for linotype school was void where makers were not furnished with copy of note. Mergenthaler Linotype Co. v. McNamee, 125 Neb. 71, 249 N.W. 92 (1933).

62-304 Violations; penalty.

Any person who shall violate any of the provisions of section 62-303 shall be deemed guilty of a Class III misdemeanor.

Source: Laws 1915, c. 220, § 2, p. 490; C.S.1922, § 4808; C.S.1929, § 62-1709; R.S.1943, § 62-304; Laws 1977, LB 39, § 107.

62-305 Tuition notes or contracts of business colleges; when void.

Any note or contract taken by any business college, or the business or commercial department of any other school, or by their agents or representatives, for tuition or scholarships, without first having complied with all the provisions of section 62-303, shall be void.

Source: Laws 1915, c. 220, § 3, p. 490; C.S.1922, § 4809; C.S.1929, § 62-1710; R.S.1943, § 62-305.

Foreign corporation obtaining contract for course of instruction without complying with statutes of Nebraska cannot enforce note under principle of comity. Refrigeration & Air Condi-

tioning Institute, Inc. v. Hilyard, 146 Neb. 42, 18 N.W.2d 548 (1945).

62-306 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-307 Repealed. Laws 1949, c. 183, § 4.

62-308 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-309 Repealed. Laws 1963, c. 544, art. 10, § 1.

MISCELLANEOUS PROVISIONS

§ 62-310

62-310 Repealed. Laws 1963, c. 544, art. 10, § 1.

CHAPTER 63

NEWSPAPERS AND PERIODICALS

Cross References

Constitutional provisions:

- Freedom of the press, see Article I, section 5, Constitution of Nebraska.
- Publication of proposed constitutional amendments, see Article XVI, section 1, Constitution of Nebraska.

Advertisements:

- False or misleading, see sections 28-1476 to 28-1478, 44-1525, and 59-1614.
- State banner, use prohibited, see section 90-103 et seq.

Free Flow of Information Act, see section 20-147.

Jurors, reading newspaper, when grounds for challenge, see section 25-1636.

Legal publications and notices:

- Interested party may select newspaper, see section 25-522.
- Legal newspaper, defined, see section 25-523.
- Proof of publication, see sections 25-1274 to 25-1277.
- Rates, generally, see section 33-141 et seq.
- Time and number of insertions, see sections 25-2227 and 25-2228.
- Libel and slander**, civil actions, measure of damages, see sections 25-840 and 25-840.01.
- Obscene literature**, prohibited distribution, see sections 28-807 to 28-829.

Press associations, see sections 86-601 to 86-609.

Sales and use tax exemption, see section 77-2704.07.

Sample ballot, publication of, see section 32-803 et seq.

Telegraph companies and press associations, discrimination prohibited, see sections 86-601 to 86-610.

Section

- 63-101. Newspapers, magazines, periodicals; recipient, when not liable for subscription price.
- 63-102. Books, pamphlets; printing copies in excess of contract prohibited.
- 63-103. Violations; penalty.
- 63-104. Transferred to section 69-2201.
- 63-105. Digital voice newspaper delivery system; legislative findings.
- 63-106. Digital voice newspaper delivery system; Commission for the Blind and Visually Impaired; duties; limit on charges.

63-101 Newspapers, magazines, periodicals; recipient, when not liable for subscription price.

No person in this state shall be compelled to pay for any newspaper, magazine or other publication which shall be mailed or sent to him without his having subscribed for or ordered it, or which shall be mailed or sent to him after the time of his subscription or order therefor has expired, notwithstanding that he may have received it.

Source: Laws 1905, c. 104, § 1, p. 500; R.S.1913, § 5514; C.S.1922, § 4810; C.S.1929, § 63-101; R.S.1943, § 63-101.

63-102 Books, pamphlets; printing copies in excess of contract prohibited.

It shall be unlawful for any person, firm or corporation who shall enter into contract for the printing, stereotyping, binding or publication of any book, pamphlet, circular, or other publication of any character or description, for any author, compiler or publisher, to print any greater number of copies of such book, pamphlet, circular, or other publication, than the number designated by the contract for such publication.

Source: Laws 1905, c. 202, § 1, p. 695; R.S.1913, § 5515; C.S.1922, § 4811; C.S.1929, § 63-102; R.S.1943, § 63-102.

63-103 Violations; penalty.

Any person, firm or corporation violating any of the provisions of section 63-102 shall upon conviction thereof be guilty of a Class IV misdemeanor and in addition thereto shall be liable to the author, compiler or publisher with whom such contract was made, for all damages which may accrue by reason of such unlawful publication.

Source: Laws 1905, c. 202, § 2, p. 695; R.S.1913, § 5516; C.S.1922, § 4812; C.S.1929, § 63-103; R.S.1943, § 63-103; Laws 1977, LB 39, § 108.

63-104 Transferred to section 69-2201.**63-105 Digital voice newspaper delivery system; legislative findings.**

(1) The Legislature finds that:

(a) Newspapers are a significant and important source of daily information;

(b) As a written form of media, newspapers are able to provide indepth coverage of issues as well as coverage of a breadth of issues which may be absent in other electronic or broadcast media;

(c) While a newspaper's written format has advantages, such written format severely limits the ability of blind and other print-reading-impaired persons to obtain information from newspapers;

(d) This information deficit contributes to an unemployment rate estimated at seventy-five percent among working-age blind persons to whom the availability of such detailed news coverage would vastly improve opportunities for meaningful employment;

(e) There are a significant number of blind and other print-reading-impaired persons in Nebraska who would benefit from having timely and complete access to local and national newspapers;

(f) Due to technological advances, newspapers can be efficiently and effectively distributed by voice to enable access by blind and other print-reading-impaired persons; and

(g) The state should maintain a system by which blind and other print-reading-impaired persons can access the information newspapers provide.

(2) The purpose of this section and section 63-106 is to provide a digital voice newspaper delivery system to enable blind and other print-reading-impaired persons to access newspapers in a timely and comprehensive manner.

Source: Laws 2000, LB 352, § 20.

63-106 Digital voice newspaper delivery system; Commission for the Blind and Visually Impaired; duties; limit on charges.

(1) The Commission for the Blind and Visually Impaired shall establish standards and procedures for a statewide digital voice newspaper delivery system and shall oversee its operation. The commission shall:

(a) Enter into contracts for the operation of such system;

(b) Provide space for the location of distribution devices and other equipment necessary to operate the system;

(c) Provide for daily monitoring to assure prompt and accurate functioning;

(d) Advertise the system and recruit blind and other print-reading-impaired persons for user certification;

(e) Develop and implement procedures for user certification;

(f) Serve as a coordinator between the system operator and the certified users; and

(g) Adopt and promulgate rules and regulations to carry out this section and section 63-105.

(2) Any certified user of the system shall not be charged for access to the system other than instate and out-of-state long-distance charges incurred while accessing the system.

Source: Laws 2000, LB 352, § 21.

NOTARIES PUBLIC

CHAPTER 64
NOTARIES PUBLIC

Article.

1. General Provisions.
 - (a) Appointment and Powers. 64-101 to 64-117.
 - (b) Seal. 64-118.
 - (c) Rules and Regulations. 64-119.
2. Recognition of Acknowledgments. 64-201 to 64-215.
3. Electronic Notary Public Act. 64-301 to 64-317.

Cross References

Acknowledgments, see sections 64-201 to 64-215 and 76-216 et seq.
Commission, fees for issuance of, see section 33-102.
County officers and employees, remit notarial fees to county treasury, see section 33-153.
Fees, see section 33-133.
Nebraska Uniform Power of Attorney Act, see section 30-4001.
Protest of note or bill as evidence of dishonor, see section 25-1213.

ARTICLE 1

GENERAL PROVISIONS

(a) APPOINTMENT AND POWERS

Section	
64-101.	Appointment; qualifications; term.
64-101.01.	Written examination required.
64-102.	Commission; how obtained; bond.
64-103.	Commission; signature; seal; filing and approval of bond; delivery.
64-104.	Notary public; commission; renewal; procedure.
64-105.	Notarial acts prohibited; when.
64-105.01.	Notary public; disqualified; when.
64-105.02.	Notarization; when.
64-105.03.	Notary public; unauthorized practice of law; prohibited.
64-105.04.	Change of residence; duties.
64-106.	Repealed. Laws 1969, c. 523, § 11.
64-107.	Powers and duties; certificate or records; receipt in evidence.
64-107.01.	Oaths and affirmations.
64-108.	Summons; issuance, when authorized.
64-109.	Civil liability of notary public; actions.
64-110.	Repealed. Laws 1945, c. 145, § 15.
64-111.	Repealed. Laws 1967, c. 396, § 11.
64-112.	Removal from state; termination; notice to Secretary of State.
64-113.	Removal; grounds; procedure; penalty.
64-114.	Change of name; continue to act.
64-115.	Repealed. Laws 1982, LB 592, § 2.
64-116.	Transferred to section 64-104.
64-117.	Repealed. Laws 1982, LB 592, § 2.

(b) SEAL

64-118.	Seal; engraved or ink stamp; adopt; use.
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(c) RULES AND REGULATIONS

64-119.	Rules and regulations.
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(a) APPOINTMENT AND POWERS

64-101 Appointment; qualifications; term.

(1) The Secretary of State may appoint and commission such number of persons to the office of notary public as he or she deems necessary.

(2) There shall be one class of such appointments which shall be valid in the entire state and referred to as general notaries public.

(3) The term effective date, as used with reference to a commission of a notary public, shall mean the date of the commission unless the commission states when it goes into effect, in which event that date shall be the effective date.

(4) A general commission may refer to the office as notary public and shall contain a provision showing that the person therein named is authorized to act as a notary public anywhere within the State of Nebraska or, in lieu thereof, may contain the word general or refer to the office as general notary public.

(5) No person shall be appointed a notary public unless he or she has taken and passed a written examination on the duties and obligations of a notary public as provided in section 64-101.01.

(6) No appointment shall be made if such applicant has been convicted of (a) a felony or (b) a crime involving fraud or dishonesty within the previous five years.

(7) No appointment shall be made until such applicant has attained the age of nineteen years nor unless such applicant certifies to the Secretary of State under oath that he or she has carefully read and understands the laws relating to the duties of notaries public and will, if commissioned, faithfully discharge the duties pertaining to the office and keep records according to law.

(8) No person shall be appointed a notary public unless he or she resides in the State of Nebraska, except that the Secretary of State may appoint and commission a person as a notary public who resides in a state that borders the State of Nebraska if such person is employed in or has a regular place of work or business in this state and the Secretary of State has obtained evidence of an address of the physical location of such employment or place of work or business prior to such appointment and commission.

(9) Each person appointed a notary public shall hold office for a term of four years from the effective date of his or her commission unless sooner removed.

Source: Laws 1869, § 1, p. 20; G.S.1873, p. 493; Laws 1883, c. 58, § 1, p. 248; R.S.1913, § 5517; Laws 1919, c. 123, § 1, p. 293; Laws 1921, c. 99, § 2, p. 365; C.S.1922, § 4813; C.S.1929, § 64-101; Laws 1943, c. 136, § 1, p. 467; R.S.1943, § 64-101; Laws 1945, c. 145, § 1, p. 487; Laws 1951, c. 205, § 1, p. 763; Laws 1967, c. 396, § 2, p. 1241; Laws 1971, LB 88, § 1; Laws 1976, LB 622, § 1; Laws 2004, LB 315, § 2; Laws 2012, LB398, § 2.

The Governor is authorized to appoint such number of persons to the office of notary public as he shall deem necessary.
Cohn v. Butterfield, 89 Neb. 849, 132 N.W. 400 (1911).

64-101.01 Written examination required.

The written examination required by section 64-101 shall be developed and administered by the Secretary of State and shall consist of questions relating to

laws, procedures, and ethics for notaries public. All applicants for commission as a notary public on and after July 16, 2004, shall be required to take and pass the examination prior to being commissioned.

Source: Laws 2004, LB 315, § 3.

64-102 Commission; how obtained; bond.

Any person may apply for a commission authorizing the applicant to act as a notary public anywhere in the State of Nebraska, and thereupon the Secretary of State may, at his or her discretion, issue a commission authorizing such notary public to act as such anywhere in the State of Nebraska. A general commission shall not authorize the holder thereof to act as a notary public anywhere in the State of Nebraska until a bond in the sum of fifteen thousand dollars, with an incorporated surety company as surety, has been executed and approved by and filed in the office of the Secretary of State. Upon the filing of such bond with the Secretary of State and the issuance of such commission, such notary public shall be authorized and empowered to perform any and all the duties of a notary public in any and all the counties in the State of Nebraska. Such bond shall be conditioned for the faithful performance of the duties of such office. Such person so appointed to the office of notary public shall make oath or affirmation, to be endorsed on such bond, and subscribed by him or her before some officer authorized by law to administer oaths, and by him or her certified thereon, that he or she will support the Constitution of the United States and the Constitution of Nebraska and will faithfully and impartially discharge and perform the duties of the office of notary public.

Source: Laws 1919, c. 123, § 1, p. 293; Laws 1921, c. 99, § 2, p. 365; C.S.1922, § 4813; C.S.1929, § 64-101; Laws 1943, c. 136, § 1, p. 468; R.S.1943, § 64-102; Laws 1945, c. 145, § 2, p. 489; Laws 1967, c. 396, § 3, p. 1242; Laws 1988, LB 1030, § 47; Laws 2004, LB 315, § 4.

64-103 Commission; signature; seal; filing and approval of bond; delivery.

When any person is appointed to the office of notary public, the Secretary of State shall cause his or her signature or a facsimile thereof to be affixed to the commission and he or she shall affix thereto the great seal of the state. Upon the filing and approval of the bond, as provided for in section 64-102, the Secretary of State shall mail or deliver the commission to the applicant. The form and format of the commission shall be prescribed by the Secretary of State.

Source: Laws 1869, § 2, p. 21; G.S.1873, p. 493; R.S.1913, § 5518; C.S.1922, § 4814; C.S.1929, § 64-102; R.S.1943, § 64-103; Laws 1945, c. 145, § 3, p. 489; Laws 1963, c. 368, § 1, p. 1186; Laws 1967, c. 396, § 4, p. 1243; Laws 1988, LB 1030, § 48; Laws 2004, LB 315, § 5.

64-104 Notary public; commission; renewal; procedure.

Commissions for general notaries public may be renewed within thirty days prior to the date of expiration by filing a renewal application along with the payment of the fee prescribed in section 33-102 and a new bond with the Secretary of State. The bond required for a renewal of such commission shall be in the same manner and form as provided in section 64-102. The renewal

application shall be in the manner and form as prescribed by the Secretary of State. Any renewal application for such commission made after the date of expiration of the commission shall be made in the same manner as a new application for such commission as a general notary public.

Source: Laws 1967, c. 396, § 9, p. 1245; R.S.1943, (1986), § 64-116; Laws 1994, LB 1004, § 5; Laws 2012, LB398, § 3.

64-105 Notarial acts prohibited; when.

(1) A notary public shall not perform any notarial act as authorized by Chapter 64, articles 1 and 2, if the principal:

(a) Is not in the presence of the notary public at the time of the notarial act; and

(b) Is not personally known to the notary public or identified by the notary public through satisfactory evidence.

(2) For purposes of this section:

(a) Identified by the notary public through satisfactory evidence means identification of an individual based on:

(i) At least one document issued by a government agency that is current and that bears the photographic image of the individual's face and signature and a physical description of the individual, except that a properly stamped passport without a physical description is satisfactory evidence; or

(ii) The oath or affirmation of one credible witness unaffected by the document or transaction to be notarized who is personally known to the notary public and who personally knows the individual, or the oaths or affirmations of two credible witnesses unaffected by the document or transaction to be notarized who each personally knows the individual and shows to the notary public documentary identification as described in subdivision (a)(i) of this subsection; and

(b) Personal knowledge of identity or personally known means familiarity with an individual resulting from interactions with that individual over a period of time sufficient to dispel any reasonable uncertainty that the individual has the identity claimed.

Source: Laws 2004, LB 315, § 6.

64-105.01 Notary public; disqualified; when.

A notary public is disqualified from performing a notarial act as authorized by Chapter 64, articles 1 and 2, if the notary:

(1) Is a spouse, ancestor, descendant, or sibling of the principal, including in-law, step, or half relatives;

(2) Except in the performance of duties pursuant to sections 64-211 to 64-215, has a financial or beneficial interest in the transaction other than receipt of the ordinary notarial fee or is individually named as a party to the transaction; or

(3) Does not understand the acknowledgment or notarial certificate used to certify the performance of his or her duties.

Source: Laws 2004, LB 315, § 7; Laws 2012, LB398, § 4.

64-105.02 Notarization; when.

(1) A notary public may certify the affixation of a signature by mark on a document presented for notarization if:

(a) The mark is affixed in the presence of the notary public and of two witnesses unaffected by the document;

(b) Both witnesses sign their own names beside the mark;

(c) The notary public writes below the mark: "Mark affixed by (name of signer by mark) in presence of (names and addresses of witnesses) and undersigned notary public"; and

(d) The notary public notarizes the signature by mark through an acknowledgment, jurat, or signature witnessing.

(2) A notary public may sign the name of a person physically unable to sign or make a mark on a document presented for notarization if:

(a) The person directs the notary public to do so in the presence of two witnesses unaffected by the document;

(b) The notary public signs the person's name in the presence of the person and the witnesses;

(c) Both witnesses sign their own names beside the signature;

(d) The notary public writes below the signature: "Signature affixed by notary public in the presence of (names and addresses of person and two witnesses)"; and

(e) The notary public notarizes the signature through an acknowledgment, jurat, or signature witnessing.

Source: Laws 2004, LB 315, § 8.

64-105.03 Notary public; unauthorized practice of law; prohibited.

(1) A notary public who is not an attorney shall not engage in the unauthorized practice of law as provided in this section.

(2) If notarial certificate wording is not provided or indicated for a document, a notary public who is not an attorney shall not determine the type of notarial act or certificate to be used.

(3) A notary public who is not an attorney shall not assist another person in drafting, completing, selecting, or understanding a document or transaction requiring a notarial act.

(4) A notary public who is not an attorney shall not claim to have powers, qualifications, rights, or privileges that the office of notary public does not provide, including the power to counsel on immigration matters.

(5) A notary public who is not an attorney and who advertises notarial services in a language other than English shall include in any advertisement, notice, letterhead, or sign a statement prominently displayed in the same language as follows: "I am not an attorney and have no authority to give advice on immigration or other legal matters".

(6) A notary public who is not an attorney may not use the term notario publico or any equivalent non-English term in any business card, advertisement, notice, or sign.

(7) This section does not preclude a notary public who is duly qualified, trained, or experienced in a particular industry or professional field from

selecting, drafting, completing, or advising on a document or certificate related to a matter within that industry or field.

(8) A violation of any of the provisions of this section shall be considered the unauthorized practice of law and subject to the penalties provided in section 7-101.

Source: Laws 2004, LB 315, § 9.

64-105.04 Change of residence; duties.

A notary public shall notify the Secretary of State of any change of his or her residence no later than forty-five days after such change. Information provided on the change-of-address form shall include the notary public’s name as it appears on his or her commission, the date the commission expires, and the notary public’s new address. The Secretary of State shall prescribe forms consistent with the requirements of this section.

Source: Laws 2004, LB 315, § 10.

64-106 Repealed. Laws 1969, c. 523, § 11.

64-107 Powers and duties; certificate or records; receipt in evidence.

A notary public is authorized and empowered, within the state: (1) To administer oaths and affirmations in all cases; (2) to take depositions, acknowledgments, and proofs of the execution of deeds, mortgages, powers of attorney, and other instruments in writing, to be used or recorded in this or another state; and (3) to exercise and perform such other powers and duties as authorized by the laws of this state. Over his or her signature and official seal, he or she shall certify the performance of such duties so exercised and performed under this section. Such certificate shall be received in all courts of this state as presumptive evidence of the facts therein certified to.

Source: Laws 1869, § 6, p. 22; G.S.1873, p. 494; R.S.1913, § 5522; C.S.1922, § 4818; C.S.1929, § 64-106; R.S.1943, § 64-107; Laws 1945, c. 145, § 7, p. 492; Laws 1967, c. 396, § 6, p. 1243; Laws 2012, LB398, § 5.

- 1. Certification
- 2. Liability
- 3. Miscellaneous

1. Certification

The certification of a notary public’s official duties, over his or her signature and official seal, is received by the courts as presumptive evidence of the facts certified therein. *Johnson v. Neth*, 276 Neb. 886, 758 N.W.2d 395 (2008).

Certificate of acknowledgment of notary, in proper form, is sufficient to authorize deed to be received in evidence without further proof of execution. *Neneman v. Rickley*, 110 Neb. 446, 194 N.W. 447 (1923).

Certificate is presumptive evidence of facts therein, including statement that affiant signed affidavit. *Smith v. Johnson*, 43 Neb. 754, 62 N.W. 217 (1895).

The presence of a notarial seal and the notary’s signature serves as presumptive evidence of the performance of the notary’s duty, even when the expiration date of the notary’s commission does not appear on the certificate of authentication. *Valeriano-Cruz v. Neth*, 14 Neb. App. 855, 716 N.W.2d 765 (2006).

In suit on stay bond, certificate of notary to acknowledgment of justification of surety is sufficient to make out prima facie case that surety appeared before notary and signed bond. *Emer-*

son-Brantingham Imp. Co. v. Johnson, 1 F.2d 212 (8th Cir. 1924).

Certificate of notary is presumptive evidence of facts, and fees therefor are taxable as costs in federal courts. *Baker v. Howell*, 44 F. 113 (Cir. Ct., D. Neb. 1890).

2. Liability

Giving notice of dishonor is official duty, and for neglect of same, notary and sureties are liable. *Williams v. Parks*, 63 Neb. 747, 89 N.W. 395 (1902).

Collecting bank, delivering bill to notary to protest, generally is not liable for his default, but is where notary is manager of bank. *Wood River Bank v. First Nat. Bank of Omaha*, 36 Neb. 744, 55 N.W. 239 (1893).

3. Miscellaneous

Fees for protesting local bank check are recoverable against drawer and drawee. *German Nat. Bank of Beatrice v. Beatrice Nat. Bank*, 63 Neb. 246, 88 N.W. 480 (1901).

Notary must sign name to jurat of affidavit. *Holmes v. Crooks*, 56 Neb. 466, 76 N.W. 1073 (1898).

Affidavit is void where jurat shows same was taken outside jurisdiction of notary. *Byrd v. Cochran*, 39 Neb. 109, 58 N.W. 127 (1894).

64-107.01 Oaths and affirmations.

Oaths and affirmations may be administered, in all cases whatsoever, by notaries public.

Source: R.S.1866, p. 274; Laws 1909, c. 92, § 1, p. 388; R.S.1913, § 5530; C.S.1922, § 4826; C.S.1929, § 65-101; R.S.1943, § 65-101; Laws 1951, c. 207, § 1, p. 768; Laws 1972, LB 1032, § 266; R.S.1943, (1986), § 65-101; Laws 1990, LB 822, § 38; Laws 1990, LB 821, § 40.

64-108 Summons; issuance, when authorized.

Every notary public, when notice by a party to any civil suit pending in any court of this state upon any adverse party for the taking of any testimony of witnesses by deposition, or any commission to take testimony of witnesses to be preserved for use in any suit thereafter to be commenced, has been deposited with him or her, or when a special commission issued out of any court of any state or country without this state, together with notice for the taking of testimony by depositions or commissions, has been deposited with him or her, is empowered to issue summons and command the presence before him or her of witnesses. All sheriffs and constables in this state are required to serve and return all process issued by notaries public in the taking of testimony of witnesses by commission or deposition.

Source: Laws 1869, § 7, p. 23; G.S.1873, p. 495; R.S.1913, § 5523; C.S.1922, § 4819; C.S.1929, § 64-107; R.S.1943, § 64-108; Laws 2005, LB 348, § 18.

Notary public has right to issue order of commitment, finding witness in contempt for refusing to answer a proper question, and same rule applies to refusal to testify in a hearing before referee appointed by court. *State v. Degele*, 137 Neb. 810, 291 N.W. 554 (1940).

Notary need not order witness to answer questions before committing for contempt where witness refuses to answer on ground of privilege and is asked if he is familiar with penalty for refusal to answer. *Ehlers v. State*, 133 Neb. 241, 274 N.W. 570 (1937).

Section is constitutional, and notary may punish witness for contempt for refusing to give deposition. *Olmsted v. Edson*, 71

Neb. 17, 98 N.W. 415 (1904); *Dogge v. State*, 21 Neb. 272, 31 N.W. 929 (1887).

Notary cannot punish persons for misdemeanors or misbehavior during taking of deposition. *Courtney v. Knox*, 31 Neb. 652, 48 N.W. 763 (1891).

This section authorizes a notary to issue a subpoena only after notice of deposition has been deposited with the reporter. *Burke v. Harman*, 6 Neb. App. 309, 574 N.W.2d 156 (1998).

A witness may be compelled by process to appear before a notary and answer questions to depositions. *Roschynialski v. Hale*, 201 F. 1017 (D. Neb. 1913).

64-109 Civil liability of notary public; actions.

If any person shall be damaged or injured by the unlawful act, negligence or misconduct of any notary public in his official capacity, the person damaged or injured may maintain a civil action on the official bond of such notary public against such notary public, and his sureties, and a recovery in such action shall not be a bar to any future action for other causes to the full amount of the bond.

Source: Laws 1869, § 8, p. 23; G.S.1873, p. 495; R.S.1913, § 5524; C.S.1922, § 4820; C.S.1929, § 64-108; R.S.1943, § 64-109.

64-110 Repealed. Laws 1945, c. 145, § 15.

64-111 Repealed. Laws 1967, c. 396, § 11.

64-112 Removal from state; termination; notice to Secretary of State.

Every notary public removing from the State of Nebraska shall notify the Secretary of State of such removal. Such a removal shall terminate the term of his office.

Source: Laws 1869, § 12, p. 25; G.S.1873, p. 496; Laws 1883, c. 58, § 2, p. 249; R.S.1913, § 5528; C.S.1922, § 4824; C.S.1929, § 64-112; R.S.1943, § 64-112; Laws 1945, c. 145, § 9, p. 493; Laws 1967, c. 396, § 7, p. 1244.

64-113 Removal; grounds; procedure; penalty.

(1) Whenever charges of malfeasance in office are preferred to the Secretary of State against any notary public in this state, or whenever the Secretary of State has reasonable cause to believe any notary public in this state is guilty of acts of malfeasance in office, the Secretary of State may appoint any disinterested person, not related by consanguinity to either the notary public or person preferring the charges, and authorized by law to take testimony of witnesses by deposition, to notify such notary public to appear before him or her on a day and at an hour certain, after at least ten days from the day of service of such notice. At such appearance, the notary public may show cause as to why his or her commission should not be canceled or temporarily revoked. The appointee may issue subpoenas to require the attendance and testimony of witnesses and the production of any pertinent records, papers, or documents, may administer oaths, and may accept any evidence he or she deems pertinent to a proper determination of the charge. The notary public may appear, at such time and place, and cross-examine witnesses and produce witnesses in his or her behalf. Upon the receipt of such examination, duly certified in the manner prescribed for taking depositions to be used in suits in the district courts of this state, the Secretary of State shall examine the same, and if therefrom he or she finds that the notary public is guilty of acts of malfeasance in office, he or she may remove the person charged from the office of notary public or temporarily revoke such person's commission. Within fifteen days after such removal or revocation and notice thereof, such notary public shall deposit, with the Secretary of State, the commission as notary public and notarial seal. The commission shall be canceled or temporarily revoked by the Secretary of State. A person so removed from office shall be forever disqualified from holding the office of notary public. A person whose commission is temporarily revoked shall be returned his or her commission and seal upon completion of the revocation period and passing the examination described in section 64-101.01. The fees for taking such testimony shall be paid by the state at the same rate as fees for taking depositions by notaries public. The failure of the notary public to deposit his or her commission and seal with the Secretary of State as required by this section shall subject him or her to a penalty of one thousand dollars, to be recovered in the name of the state.

(2) For purposes of this section, malfeasance in office means, while serving as a notary public, (a) failure to follow the requirements and procedures for notarial acts provided for in Chapter 64, articles 1 and 2, (b) violating the confidentiality provisions of section 71-6911, or (c) being convicted of a felony or other crime involving fraud or dishonesty.

Source: Laws 1869, § 14, p. 25; G.S.1873, p. 497; R.S.1913, § 5529; C.S.1922, § 4825; C.S.1929, § 64-113; R.S.1943, § 64-113; Laws

1945, c. 145, § 10, p. 493; Laws 1967, c. 396, § 8, p. 1244; Laws 2004, LB 315, § 11; Laws 2011, LB690, § 2; Laws 2012, LB398, § 6.

Under former law where charges of malfeasance in office were brought to the Governor against a notary public, Governor was required to hold hearing, and if satisfied that charges were proven, remove the notary from office. Cohn v. Butterfield, 89 Neb. 849, 132 N.W. 400 (1911).

64-114 Change of name; continue to act.

Any person, whose name is legally changed after a commission as a notary public is issued to him or her, may continue to act as such notary public and use the original commission, seal, and name until the expiration or termination of such commission. The bond given by such notary public shall continue in effect, regardless of such legal change of name of such notary public, if the notary public uses the name under which the commission is issued.

Source: Laws 1945, c. 145, § 13, p. 495.

64-115 Repealed. Laws 1982, LB 592, § 2.

64-116 Transferred to section 64-104.

64-117 Repealed. Laws 1982, LB 592, § 2.

(b) SEAL

64-118 Seal; engraved or ink stamp; adopt; use.

All persons, officers, and governmental and nongovernmental bodies and associations heretofore authorized by law to adopt and use a seal on official documents are hereby authorized to adopt and use either an engraved or ink stamp seal for such purposes, unless the use of ink stamp seals for such purposes is specifically prohibited by law.

Source: Laws 1971, LB 653, § 12.

Cross References

Additional requirements for notary public seal, see section 64-210.

(c) RULES AND REGULATIONS

64-119 Rules and regulations.

The Secretary of State may adopt and promulgate rules and regulations relating to the administration of, but not inconsistent with, the provisions of sections 64-101 to 64-118.

Source: Laws 2012, LB398, § 7.

ARTICLE 2

RECOGNITION OF ACKNOWLEDGMENTS

Section

- 64-201. Notarial acts, defined; performed; effect.
- 64-202. Notarial act; performance; proof of authority; maintenance of records.
- 64-203. Certificate; contents.
- 64-204. Certificate of acknowledgment; form; acceptance.
- 64-205. Acknowledgment, defined.
- 64-206. Statutory short forms of acknowledgment; use of other forms.

Section

- 64-207. Prior notarial acts; effect.
- 64-208. Sections, how interpreted.
- 64-209. Act, how cited.
- 64-210. Ink stamp seal; contents.
- 64-211. Acknowledgment of written instrument; attorneys; real estate broker or salesman; oath; authorized; prior acknowledgments validated.
- 64-212. Acknowledgment of written instrument; insurance company; credit union; oath; authorized.
- 64-213. Acknowledgments of written instruments; insurance company; credit union; oath; prior acknowledgments validated.
- 64-214. Acknowledgments of written instruments; bank; oath; authorized; prior acknowledgments validated.
- 64-215. Acknowledgments of written instruments; savings and loan association; oath; authorized; prior acknowledgments validated.

64-201 Notarial acts, defined; performed; effect.

For the purposes of sections 64-201 to 64-210, unless the context otherwise requires: Notarial acts means acts which the laws and regulations of this state authorize notaries public of this state to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents. Notarial acts may be performed outside this state for use in this state with the same effect as if performed by a notary public of this state by the following persons authorized pursuant to the laws and regulations of other governments in addition to any other person authorized by the laws and regulations of this state:

- (1) A notary public authorized to perform notarial acts in the place in which the act is performed;
- (2) A judge, clerk, or deputy clerk of any court of record in the place in which the notarial act is performed;
- (3) An officer of the foreign service of the United States, a consular agent, or any other person authorized by regulation of the United States Department of State to perform notarial acts in the place in which the act is performed;
- (4) A commissioned officer in active service with the armed forces of the United States and any other person authorized by regulation of the armed forces to perform notarial acts if the notarial act is performed for one of the following or his dependents: A merchant seaman of the United States, a member of the armed forces of the United States, or any other person serving with or accompanying the armed forces of the United States; or
- (5) Any other person authorized to perform notarial acts in the place in which the act is performed.

Source: Laws 1969, c. 523, § 1, p. 2139.

64-202 Notarial act; performance; proof of authority; maintenance of records.

- (1) If the notarial act is performed by any of the persons described in sections 64-201 to 64-204, other than a person authorized to perform notarial acts by the laws or regulations of a foreign country, the signature, rank, or title and serial number, if any, of the person are sufficient proof of the authority of a holder of that rank or title to perform the act. Further proof of his or her authority shall not be required.

(2) If the notarial act is performed by a person authorized by the laws or regulations of a foreign country to perform the act, there is sufficient proof of the authority of that person to act if:

(a) Either a foreign service officer of the United States resident in the country in which the act is performed or a diplomatic or consular officer of the foreign country resident in the United States certifies that a person holding that office is authorized to perform the act;

(b) The official seal of the person performing the notarial act is affixed to the document; or

(c) The title and indication of authority to perform notarial acts of the person appears either in a digest of foreign law or in a list customarily used as a source of such information.

(3) An apostille in the form prescribed by the Hague Convention of October 5, 1961, shall conclusively establish that the signature of the notarial officer is genuine and that the officer holds the designated office. The Secretary of State or his or her deputy shall be authorized to sign the apostille.

(4) The Secretary of State may authorize the use of computers to maintain necessary records dealing with notaries public in the State of Nebraska.

Source: Laws 1969, c. 523, § 2, p. 2140; Laws 1988, LB 1030, § 49.

64-203 Certificate; contents.

The person taking an acknowledgment shall certify that:

(1) The person acknowledging appeared before him and acknowledged he executed the instrument; and

(2) The person acknowledging was known to the person taking the acknowledgment or that the person taking the acknowledgment had satisfactory evidence that the person acknowledging was the person described in and who executed the instrument.

Source: Laws 1969, c. 523, § 3, p. 2141.

An attestation clause that does not list a name in the acknowledgment section is incomplete. Johnson v. Neth, 276 Neb. 886, 758 N.W.2d 395 (2008).

64-204 Certificate of acknowledgment; form; acceptance.

The form of a certificate of acknowledgment used by a person whose authority is recognized under section 64-201 shall be accepted in this state if:

(1) The certificate is in a form prescribed by the laws or regulations of this state;

(2) The certificate is in a form prescribed by the laws or regulations applicable in the place in which the acknowledgment is taken; or

(3) The certificate contains the words acknowledged before me, or their substantial equivalent.

Source: Laws 1969, c. 523, § 4, p. 2141.

64-205 Acknowledgment, defined.

The words acknowledged before me means:

(1) That the person acknowledging appeared before the person taking the acknowledgment;

(2) That he or she acknowledged he or she executed the instrument;

(3) That, in the case of:

(i) A natural person, he or she executed the instrument for the purposes therein stated;

(ii) A corporation, the officer or agent acknowledged he or she held the position or title set forth in the instrument and certificate, he or she signed the instrument on behalf of the corporation by proper authority and the instrument was the act of the corporation for the purpose therein stated;

(iii) A partnership, the partner or agent acknowledged he or she signed the instrument on behalf of the partnership by proper authority and he or she executed the instrument as the act of the partnership for the purposes therein stated;

(iv) A limited liability company, the member or agent acknowledged he or she signed the instrument on behalf of the limited liability company by proper authority and he or she executed the instrument as the act of the limited liability company for the purposes therein stated;

(v) A person acknowledging as principal by an attorney in fact, he or she executed the instrument by proper authority as the act of the principal for the purposes therein stated;

(vi) A person acknowledging as a public officer, trustee, administrator, guardian, or other representative, he or she signed the instrument by proper authority and he or she executed the instrument in the capacity and for the purposes therein stated; and

(4) That the person taking the acknowledgment either knew or had satisfactory evidence that the person acknowledging was the person named in the instrument or certificate.

Source: Laws 1969, c. 523, § 5, p. 2141; Laws 1993, LB 121, § 393.

64-206 Statutory short forms of acknowledgment; use of other forms.

The forms of acknowledgment set forth in this section may be used and are sufficient for their respective purposes under any law of this state. The forms shall be known as Statutory Short Forms of Acknowledgment and may be referred to by that name. The authorization of the forms in this section does not preclude the use of other forms.

(1) For an individual acting in his or her own right:

State of

County of

The foregoing instrument was acknowledged before me this (date) by (name of person acknowledged).

(Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

(2) For a corporation:

State of

County of

The foregoing instrument was acknowledged before me this (date) by (name of officer or agent, title of officer or agent) of (name of corporation acknowledging) a (state or place of incorporation) corporation, on behalf of the corporation.

(Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

(3) For a partnership:

State of

County of

The foregoing instrument was acknowledged before me this (date) by (name of acknowledging partner or agent), partner (or agent) on behalf of (name of partnership), a partnership.

(Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

(4) For a limited liability company:

State of

County of

The foregoing instrument was acknowledged before me this (date) by (name of acknowledging member or agent), member (or agent) on behalf of (name of limited liability company), a limited liability company.

(Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

(5) For an individual acting as principal by an attorney in fact:

State of

County of

The foregoing instrument was acknowledged before me this (date) by (name of attorney in fact) as attorney in fact on behalf of (name of principal).

(Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

(6) By any Public Officer, trustee, or personal representative:

State of

County of

The foregoing instrument was acknowledged before me this (date) by (name and title of position).

(Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

Source: Laws 1969, c. 523, § 6, p. 2142; Laws 1993, LB 121, § 394.

64-207 Prior notarial acts; effect.

A notarial act performed prior to August 25, 1969, is not affected by sections 64-201 to 64-210. Sections 64-201 to 64-210 provide an additional method of proving notarial acts. Nothing in sections 64-201 to 64-210 diminishes or invalidates the recognition accorded to notarial acts by other laws or regulations of this state.

Source: Laws 1969, c. 523, § 7, p. 2144.

64-208 Sections, how interpreted.

Sections 64-201 to 64-210 shall be so interpreted as to make uniform the laws of those states which enact them.

Source: Laws 1969, c. 523, § 8, p. 2144.

64-209 Act, how cited.

Sections 64-201 to 64-210 may be cited as the Uniform Recognition of Acknowledgments Act.

Source: Laws 1969, c. 523, § 9, p. 2144.

64-210 Ink stamp seal; contents.

(1) Each notary public, before performing any duties of his or her office, shall provide himself or herself with an official ink stamp seal on which shall appear the words State of Nebraska, General Notary or State of Nebraska, General Notarial, his or her name as commissioned, and the date of expiration of his or her commission.

(2) A notary public shall authenticate all of his or her official acts with such seal.

(3) A notary public whose commission was issued by the Secretary of State before September 1, 2007, is not required to purchase a new ink stamp seal in order to comply with this section until the notary public's commission expires. Upon renewal, each notary public shall have engraved on his or her official ink stamp seal all of the information required in subsection (1) of this section.

Source: Laws 1969, c. 523, § 10, p. 2144; Laws 1971, LB 88, § 2; Laws 2004, LB 315, § 12; Laws 2007, LB382, § 1.

64-211 Acknowledgment of written instrument; attorneys; real estate broker or salesman; oath; authorized; prior acknowledgments validated.

(1) It shall be lawful for any attorney or any employer or associate of any such attorney, or for any stockholder, officer, or employee of any professional corporation authorized to practice law and who is a notary public to take the acknowledgment of any written instrument given in connection with the professional activities of such attorney or corporation and to administer an oath to any person executing any such instrument.

(2) It shall be lawful for any real estate broker or salesman or any employee or associate of any such broker and who is a notary public to take the acknowledgment of any written instrument given to or by any client of such broker and to administer an oath to any person or persons executing any such instrument.

(3) Acknowledgments taken or oaths administered prior to February 9, 1976, by any person described in subsections (1) and (2) of this section are hereby ratified and shall in all respects be lawful, valid, and binding.

Source: Laws 1975, LB 121, § 1; Laws 1976, LB 622, § 2.

Although this section allows a lawyer to take acknowledgments, he may not do so when he is an interested party. *Nat. Bank of Commerce Trust & Savings Assn. v. Rhodes*, 207 Neb. 44, 295 N.W.2d 711 (1980).

64-212 Acknowledgment of written instrument; insurance company; credit union; oath; authorized.

It shall be lawful for a member or shareholder, an appointive officer, elective officer, agent, director, or employee of an insurance company or a credit union who is a notary public to take the acknowledgment of any person to any written instrument executed to or by the insurance company or credit union and to administer an oath to any shareholder, director, elected or appointed officer, employee, or agent of such insurance company or credit union.

Source: Laws 1947, c. 247, § 1, p. 771; Laws 1949, c. 221, § 1, p. 622; Laws 1951, c. 253, § 1, p. 873; Laws 1957, c. 315, § 2, p. 1133; R.R.S.1943, § 76-217.02; Laws 1976, LB 622, § 3; Laws 1976, LB 704, § 1; Laws 2002, LB 1094, § 15.

64-213 Acknowledgments of written instruments; insurance company; credit union; oath; prior acknowledgments validated.

Acknowledgments heretofore taken of any person to any written instrument given to or by an insurance company or credit union, or any oath administered to any member, director, elected officer, shareholder, appointive officer, employee, or agent of an insurance company or credit union, by any notary public, who was a member, shareholder, appointive officer, agent, or employee of the insurance company or credit union, and not a director or elected officer thereof, shall be deemed to be lawful, valid, and binding.

Source: R.S.1866, c. 43, § 3, p. 280; R.S.1913, § 6198; C.S.1922, § 5597; C.S.1929, § 76-203; R.S.1943, § 76-217; Laws 1947, c. 244, § 1, p. 768; Laws 1959, c. 347, § 1, p. 1233; R.R.S.1943, § 76-217.03; Laws 1976, LB 622, § 4; Laws 2002, LB 1094, § 16.

64-214 Acknowledgments of written instruments; bank; oath; authorized; prior acknowledgments validated.

(1) It is lawful for any stockholder, director, officer, employee, or agent of a bank, who is a notary public, to take the acknowledgment of any person to any written instrument given to or by the bank and to administer an oath to any other stockholder, director, officer, employee, or agent of the bank.

(2) Acknowledgments heretofore taken of any person to any written instrument given to or by a bank or any oath administered to any stockholder, director, officer, employee, or agent of a bank by any notary public who was a stockholder, director, officer, employee, or agent of the bank shall be deemed to be lawful, valid, and binding.

Source: Laws 1957, c. 316, § 1, p. 1134; R.R.S.1943, § 76-217.04; Laws 1976, LB 622, § 5; Laws 2008, LB851, § 26.

64-215 Acknowledgments of written instruments; savings and loan association; oath; authorized; prior acknowledgments validated.

It is lawful for any shareholder, director, employee, agent, or any elected or appointed officer of a savings and loan association, who is a notary public, (1) to take the acknowledgment of any person to any written instrument given to or by the savings and loan association and (2) to administer an oath to any other shareholder, director, officer, employee, or agent of the savings and loan association. Acknowledgments heretofore taken of any person to any written instrument given to or by a savings and loan association, or any oath administered to any shareholder, director, employee, agent, or elected or appointed officer of a savings and loan association by any notary public who was a shareholder, director, employee, agent, or any elected or appointed officer of the savings and loan association, shall be deemed to be lawful, valid, and binding.

Source: Laws 1957, c. 315, § 1, p. 1132; R.R.S.1943, § 76-217.05; Laws 1976, LB 622, § 6; Laws 2003, LB 131, § 33.

ARTICLE 3**ELECTRONIC NOTARY PUBLIC ACT**

Section

- 64-301. Act, how cited.
- 64-302. Terms, defined.
- 64-303. Eligibility to register as electronic notary public; Secretary of State; powers.
- 64-304. Registration; renewal.
- 64-305. Course of instruction; examination.
- 64-306. Fee.
- 64-307. Type of electronic notarial acts authorized.
- 64-308. Signer of document; requirements.
- 64-309. Performance of electronic notarial act; components.
- 64-310. Notary public's electronic signature and electronic notary seal; use; maintenance of records; notification to Secretary of State of theft or vandalism.
- 64-311. Registration expiration, resignation, cancellation, or revocation; death of notary public; duties.
- 64-312. Electronic evidence of authenticity of notary public's electronic signature and electronic notary seal; form.
- 64-313. Electronic certificate of authority; contents; fee.
- 64-314. Violations of act.
- 64-315. Notary public not required to register.
- 64-316. Rules and regulations.
- 64-317. Other laws applicable.

64-301 Act, how cited.

Sections 64-301 to 64-317 shall be known and may be cited as the Electronic Notary Public Act.

Source: Laws 2016, LB465, § 1.

64-302 Terms, defined.

For purposes of the Electronic Notary Public Act:

- (1) Electronic means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;
- (2) Electronic document means information that is created, generated, sent, communicated, received, or stored by electronic means;

(3) Electronic notarial act means an official act by an electronic notary public that involves electronic documents;

(4) Electronic notary public means a notary public registered with the Secretary of State that has the capability of performing electronic notarial acts in conformance with the Electronic Notary Public Act;

(5) Electronic notary seal means information within a notarized electronic document that includes the notary public's name, jurisdiction, and commission expiration date and generally corresponds to the data in notary seals used on paper documents;

(6) Electronic notary solution provider means a provider of any electronic notary seals or electronic signatures;

(7) Electronic signature means an electronic symbol or process attached to or logically associated with an electronic document and executed or adopted by a person with the intent to sign the document; and

(8) Notary public's electronic signature means an electronic signature which has been approved by the Secretary of State in rules and regulations adopted and promulgated under section 64-316 as an acceptable means for an electronic notary public to attach or logically associate the notary public's official signature to an electronic document that is being notarized.

Source: Laws 2016, LB465, § 2.

64-303 Eligibility to register as electronic notary public; Secretary of State; powers.

(1) To be eligible to register as an electronic notary public, a person shall:

- (a) Hold a valid commission as a notary public in the State of Nebraska;
- (b) Satisfy the education requirement of section 64-305; and
- (c) Pay the fee required under section 64-306.

(2) The Secretary of State shall not accept the registration if the requirements of subsection (1) of this section are not met.

Source: Laws 2016, LB465, § 3.

64-304 Registration; renewal.

(1) Before performing an electronic notarial act, a notary public shall register with the Secretary of State in a manner prescribed by the Secretary of State.

(2) The registration shall specify the technology the notary public intends to use to perform an electronic notarial act. Such technology shall be provided by an electronic notary solution provider approved by the Secretary of State.

(3) The term of registration as an electronic notary public shall coincide with the term of the commission of the notary public.

(4) A person registered as an electronic notary public may renew his or her electronic notary public registration at the same time he or she renews his or her notary public commission.

Source: Laws 2016, LB465, § 4.

64-305 Course of instruction; examination.

(1) Before registering as an electronic notary public, a notary public shall take a course of instruction approved by the Secretary of State and pass an

examination for such course in addition to the requirements provided in section 64-101.01.

(2) The content of the course and the basis for the examination shall include notarial laws, procedures, technology, and the ethics of electronic notarization.

Source: Laws 2016, LB465, § 5.

64-306 Fee.

The fee for registering or reregistering as an electronic notary shall be in addition to the fee required in section 33-102. The Secretary of State shall establish the fee by rule and regulation in an amount sufficient to cover the costs of administering the Electronic Notary Public Act, but the fee shall not exceed one hundred dollars. The Secretary of State shall remit fees received under this section to the State Treasurer for credit to the Administration Cash Fund for use in administering the Electronic Notary Public Act.

Source: Laws 2016, LB465, § 6.

64-307 Type of electronic notarial acts authorized.

The following types of electronic notarial acts may be performed by an electronic notary public:

- (1) Acknowledgments;
- (2) Jurats;
- (3) Verifications or proofs; and
- (4) Oaths or affirmations.

Source: Laws 2016, LB465, § 7.

64-308 Signer of document; requirements.

An electronic notarial act shall not be performed if the signer of the electronic document is not in the physical presence of the electronic notary public at the time of notarization and is not personally known to the electronic notary public or identified by the notary public through satisfactory evidence as provided in section 64-105.

Source: Laws 2016, LB465, § 8.

64-309 Performance of electronic notarial act; components.

In performing an electronic notarial act, all of the following components shall be attached to, or logically associated with, the electronic document by the electronic notary public and shall be immediately perceptible and reproducible in the electronic document to which the notary public's electronic signature is attached: (1) The electronic notary seal; (2) the notary public's electronic signature; and (3) the completed wording of one of the following notarial certificates: (a) Acknowledgment, (b) jurat, (c) verification or proof, or (d) oath or affirmation.

Source: Laws 2016, LB465, § 9.

64-310 Notary public's electronic signature and electronic notary seal; use; maintenance of records; notification to Secretary of State of theft or vandalism.

(1) A notary public's electronic signature in combination with the electronic notary seal shall be used only for the purpose of performing an electronic notarial act.

(2) An electronic notary public shall safeguard his or her electronic signature, electronic notary seal, and all other notarial records. Notarial records shall be maintained by the electronic notary public, and the electronic notary public shall not surrender or destroy the records except as required by a court order or as allowed under rules and regulations adopted and promulgated by the Secretary of State.

(3) When not in use, the electronic notary public shall keep his or her electronic signature, electronic notary seal, and all other notarial records secure, under his or her exclusive control, and shall not allow them to be used by any other notary public or any other person.

(4) Within ten days after discovering that his or her electronic notary seal or electronic signature has been stolen, lost, damaged, or otherwise rendered incapable of being attached to or logically associated with an electronic document, an electronic notary public shall notify the Secretary of State and appropriate law enforcement agency in the case of theft or vandalism.

Source: Laws 2016, LB465, § 10.

64-311 Registration expiration, resignation, cancellation, or revocation; death of notary public; duties.

(1) When the registration of an electronic notary public expires or is resigned, canceled, or revoked or when an electronic notary public dies, he or she or his or her duly authorized representative shall erase, delete, or destroy the coding, disk, certificate, card, software, file, or program that enables the attachment or logical association of the notary public's electronic signature.

(2) A former electronic notary public whose previous registration was not revoked, canceled, or denied by the Secretary of State need not erase, delete, or destroy the coding, disk, certificate, card, software, file, or program that enables the attachment or logical association of the notary public's electronic signature if he or she is reregistered as an electronic notary public using the same electronic signature within three months after the registration expires.

Source: Laws 2016, LB465, § 11.

64-312 Electronic evidence of authenticity of notary public's electronic signature and electronic notary seal; form.

Electronic evidence of the authenticity of the notary public's electronic signature and electronic notary seal of an electronic notary public of this state, if required, shall be attached to, or logically associated with, a document with a notary public's electronic signature transmitted to another state or nation and shall be in the form of an electronic certificate of authority signed by the Secretary of State in conformance with any current and pertinent international treaties, agreements, and conventions subscribed to by the United States Government.

Source: Laws 2016, LB465, § 12.

64-313 Electronic certificate of authority; contents; fee.

(1) An electronic certificate of authority evidencing the authenticity of the notary public’s electronic signature and electronic notary seal of an electronic notary public of this state shall contain substantially the following words:

Certificate of Authority for an Electronic Notarial Act

I(name, title, jurisdiction of commissioning official) certify that (name of electronic notary public), the person named as an electronic notary public in the attached or associated document, was indeed registered as an electronic notary public for the State of Nebraska and authorized to act as such at the time of the document’s electronic notarization. To verify this Certificate of Authority for an Electronic Notarial Act, I have included herewith my electronic signature this day of, 20.....

(Electronic signature (and seal) of commissioning official)

(2) The Secretary of State may charge a fee of twenty dollars for issuing an electronic certificate of authority. The Secretary of State shall remit the fees to the State Treasurer for credit to the Administration Cash Fund.

Source: Laws 2016, LB465, § 13.

64-314 Violations of act.

A person violating the Electronic Notary Public Act is subject to having his or her registration removed under the removal procedures provided in section 64-113.

Source: Laws 2016, LB465, § 14.

64-315 Notary public not required to register.

Nothing in the Electronic Notary Public Act requires a notary public to register as an electronic notary public if he or she does not perform electronic notarial acts.

Source: Laws 2016, LB465, § 15.

64-316 Rules and regulations.

The Secretary of State may adopt and promulgate rules and regulations to insure the integrity, security, and authenticity of electronic notarizations in accordance with the Electronic Notary Public Act. Such rules and regulations shall include procedures for the approval of electronic notary solution providers by the Secretary of State. In addition, the Secretary of State may require an electronic notary public to create and to maintain a record, journal, or entry of each electronic notarial act.

Source: Laws 2016, LB465, § 16.

64-317 Other laws applicable.

Sections 64-101 to 64-119 and 64-211 to 64-215 and the Uniform Recognition of Acknowledgments Act govern an electronic notary public unless the provisions of such sections and act are in conflict with the Electronic Notary Public Act, in which case the Electronic Notary Public Act controls.

Source: Laws 2016, LB465, § 17.

Cross References

Uniform Recognition of Acknowledgments Act, see section 64-209.

CHAPTER 65
OATHS AND AFFIRMATIONS

Section
65-101. Transferred to section 64-107.01.

65-101 Transferred to section 64-107.01.

OILS, FUELS, AND ENERGY

CHAPTER 66

OILS, FUELS, AND ENERGY

Article.

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2. Nebraska Clean-burning Motor Fuel Development Act. 66-201 to 66-204.
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4. Motor Vehicle Fuel Tax. 66-401 to 66-4,149.
5. Transportation of Fuels. 66-501 to 66-531.
6. Diesel, Alternative, and Compressed Fuel Taxes.
 - (a) Special Fuel Tax. 66-601 to 66-649. Transferred or Repealed.
 - (b) Diesel Fuel Tax. 66-650 to 66-683. Repealed.
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7. Motor Fuel Tax Enforcement and Collection. 66-701 to 66-741.
8. Gasohol and Energy Development.
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 - (c) Alcohol Plant or Facility Development. 66-825 to 66-841. Unconstitutional.
9. Solar Energy and Wind Energy. 66-901 to 66-914.
10. Energy Conservation.
 - (a) Utility Loans. 66-1001 to 66-1011.
 - (b) Low-Income Home Energy Conservation Act. 66-1012 to 66-1019.01. Repealed.
 - (c) Energy Conservation Improvement, Tax Exemption. 66-1020 to 66-1028. Repealed.
 - (d) Renewable Energy Development, Tax Credits. 66-1029 to 66-1055. Repealed.
 - (e) Geothermal Energy Utilization Grant. 66-1056 to 66-1059. Repealed.
 - (f) Integrated Resource Planning. 66-1060, 66-1061.
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12. Petroleum Products.
 - (a) Labeling of Dispensers. 66-1201 to 66-1214.
 - (b) Fuel Sampling. 66-1215 to 66-1224. Repealed.
 - (c) Reformulated Gasoline. 66-1225.
 - (d) Automotive Spark Ignition Engine Fuels. 66-1226.
 - (e) Methyl Tertiary Butyl Ether (MTBE). 66-1227.
13. Ethanol. 66-1301 to 66-1350.
14. International Fuel Tax Agreement Act. 66-1401 to 66-1427.
15. Petroleum Release Remedial Action. 66-1501 to 66-1532.
16. Propane Education and Research Act. 66-1601 to 66-1627.
17. Biopower Steering Committee. Repealed.
18. State Natural Gas Regulation Act. 66-1801 to 66-1868.
19. Wind Measurement Equipment. Repealed.
20. Natural Gas Fuel Board. 66-2001.
21. Rural Infrastructure Development. 66-2101 to 66-2107.

Cross References

Agricultural liens, see section 52-901 et seq.

Agricultural production input liens, see section 52-1401 et seq.

Lighting and thermal efficiency standards, see section 81-1608 et seq.

Pipelines for oil and gas:

Easements, see section 57-401 et seq.

Public Service Commission, jurisdiction, see section 75-501.

Regulatory powers of:

Cities of the first class, see sections 16-209 and 16-227.

Cities of the metropolitan class, see section 14-102.

Cities of the primary class, see sections 15-207 and 15-255.
 Cities of the second class and villages, see sections 17-137, 17-139, and 17-556.
Shortage of vital resources, see section 84-162 et seq.
State Fire Marshal, powers, see sections 81-502 and 81-520.

ARTICLE 1
EXPLOSIVE LIQUIDS AND GASES

Cross References

Explosives, use in transportation, penalty, see sections 28-1213 to 28-1239.
Fish and game, use in taking prohibited, see sections 37-531, 37-533, and 37-554.
Liquefied petroleum gas, regulations, see sections 57-501 to 57-507.
Natural gas, underground storage of, see sections 57-601 to 57-609.

- Section
 66-101. Repealed. Laws 1990, LB 856, § 7.
 66-102. Repealed. Laws 1990, LB 856, § 7.
 66-103. Gasoline and other explosives; sale; containers or portable tanks; type required.
 66-103.01. Containers or portable tanks, defined.
 66-104. Gasoline and other explosives; purchase; containers or portable tanks; type required.
 66-105. Kerosene; delivery; container or portable tank prohibited.
 66-106. Kerosene; use or storage; container or portable tank prohibited.
 66-107. Violation; penalty.

66-101 Repealed. Laws 1990, LB 856, § 7.

66-102 Repealed. Laws 1990, LB 856, § 7.

66-103 Gasoline and other explosives; sale; containers or portable tanks; type required.

Every person within this state retailing gasoline, benzine, and other similar types of high explosives in less than carload lots shall deliver the same to the purchaser only in containers or portable tanks painted vermilion red and having the word gasoline, benzine, or whatever name such explosive is known by plainly printed on it in English. All such words shall be in letters sufficiently large to attract attention.

Source: Laws 1907, c. 86, § 1, p. 305; R.S.1913, § 5754; C.S.1922, § 5099; C.S.1929, § 66-103; R.S.1943, § 66-103; Laws 1985, LB 441, § 1.

66-103.01 Containers or portable tanks, defined.

For the purposes of sections 66-103 to 66-106, containers or portable tanks shall mean containers or portable tanks which conform to standards which the State Fire Marshal shall adopt and promulgate by rules and regulations. The State Fire Marshal may adopt the standards, or any part of such standards, recommended for containers or portable tanks by the National Fire Protection Association.

Source: Laws 1985, LB 441, § 2.

66-104 Gasoline and other explosives; purchase; containers or portable tanks; type required.

Every person within this state purchasing gasoline or other high explosives of that nature for his or her own use shall procure and keep the same only in

NEBRASKA CLEAN-BURNING MOTOR FUEL DEVELOPMENT ACT § 66-202

containers or portable tanks painted and stamped as required by section 66-103. This section and section 66-103 shall not affect sales, purchase, or the keeping for use of such explosives if the quantity is one quart or less.

Source: Laws 1907, c. 86, § 3, p. 305; R.S.1913, § 5756; C.S.1922, § 5101; C.S.1929, § 66-105; R.S.1943, § 66-104; Laws 1985, LB 441, § 3.

66-105 Kerosene; delivery; container or portable tank prohibited.

No person shall deliver kerosene, or what is known as coal oil, in any container or portable tank painted or stamped as provided by section 66-103.

Source: Laws 1907, c. 86, § 2, p. 305; R.S.1913, § 5755; C.S.1922, § 5100; C.S.1929, § 66-104; R.S.1943, § 66-105; Laws 1985, LB 441, § 4.

66-106 Kerosene; use or storage; container or portable tank prohibited.

No person keeping for use or using kerosene, otherwise known as coal oil, shall put or keep the same in any container or portable tank painted or stamped as provided by section 66-103.

Source: Laws 1907, c. 86, § 4, p. 305; R.S.1913, § 5757; C.S.1922, § 5102; C.S.1929, § 66-106; R.S.1943, § 66-106; Laws 1985, LB 441, § 5.

66-107 Violation; penalty.

Any person violating any of the provisions of sections 66-103 to 66-106 shall upon conviction be guilty of a Class III misdemeanor.

Source: Laws 1907, c. 86, § 5, p. 305; R.S.1913, § 5758; C.S.1922, § 5103; C.S.1929, § 66-107; R.S.1943, § 66-107; Laws 1977, LB 39, § 110.

ARTICLE 2

NEBRASKA CLEAN-BURNING MOTOR FUEL DEVELOPMENT ACT

Section	
66-201.	Act, how cited.
66-202.	Terms, defined.
66-203.	Rebate for qualified clean-burning motor vehicle fuel property.
66-204.	Clean-burning Motor Fuel Development Fund; created; use; investment.

66-201 Act, how cited.

Sections 66-201 to 66-204 shall be known and may be cited as the Nebraska Clean-burning Motor Fuel Development Act.

Source: Laws 2015, LB581, § 1.

66-202 Terms, defined.

For purposes of the Nebraska Clean-burning Motor Fuel Development Act:

(1) Flex-fuel dispenser means a fuel dispenser that is certified by the manufacturer for use with ethanol blended fuels containing at least fifteen percent by volume ethanol;

(2) Motor vehicle means a motor vehicle originally designed by the manufacturer to operate lawfully and principally on highways, roads, and streets;

(3) Qualified clean-burning motor vehicle fuel means a hydrogen fuel cell, compressed natural gas, liquefied natural gas, liquefied petroleum gas, or gasoline containing at least fifteen percent by volume ethanol; and

(4) Qualified clean-burning motor vehicle fuel property means:

(a) New equipment that:

(i) Is installed:

(A) By a certified installer;

(B) On a motor vehicle registered pursuant to the Motor Vehicle Registration Act; and

(C) To convert a motor vehicle propelled by gasoline or diesel fuel to be propelled by a qualified clean-burning motor vehicle fuel as part of a dedicated bi-fuel or dual-fuel system;

(ii) Is approved by the United States Environmental Protection Agency under 40 C.F.R. part 85, subpart F, and 40 C.F.R. part 86, subpart S, as such subparts existed on January 1, 2015; and

(iii) Has not been used to modify or retrofit any other motor vehicle propelled by gasoline or diesel fuel;

(b) With respect to a motor vehicle that was originally equipped to be propelled by a qualified clean-burning motor vehicle fuel other than ethanol, the portion of the basis that is attributable to the:

(i) Storage of the qualified clean-burning motor vehicle fuel;

(ii) Delivery of the qualified clean-burning motor vehicle fuel to the motor vehicle's engine; and

(iii) Exhaust of gases from the combustion of the qualified clean-burning motor vehicle fuel; or

(c) New property that:

(i) Is directly related to the dispensing of ethanol-blended fuels containing at least fifteen percent by volume ethanol or the compression and delivery of natural gas from a private home or residence for noncommercial purposes into the fuel tank of a motor vehicle propelled by compressed natural gas; and

(ii) Has not been previously installed or used at another location to refuel motor vehicles powered by natural gas.

Source: Laws 2015, LB581, § 2; Laws 2016, LB902, § 1.

Cross References

Motor Vehicle Registration Act, see section 60-301.

66-203 Rebate for qualified clean-burning motor vehicle fuel property.

(1) The State Energy Office shall offer a rebate for qualified clean-burning motor vehicle fuel property.

(2)(a) The rebate for qualified clean-burning motor vehicle fuel property as defined in subdivisions (4)(a) and (b) of section 66-202 is the lesser of fifty percent of the cost of the qualified clean-burning motor vehicle fuel property or four thousand five hundred dollars for each motor vehicle.

(b) A qualified clean-burning motor vehicle fuel property is not eligible for a rebate under this section if the person or entity applying for the rebate has claimed another rebate or grant for the same motor vehicle under any other state rebate or grant program.

(3) The rebate for qualified clean-burning motor vehicle fuel property as defined in subdivision (4)(c) of section 66-202 is the lesser of fifty percent of the cost of the qualified clean-burning motor vehicle fuel property or two thousand five hundred dollars for each qualified clean-burning motor vehicle fuel property.

(4) No qualified clean-burning motor vehicle fuel property shall qualify for more than one rebate under this section.

Source: Laws 2015, LB581, § 3; Laws 2016, LB902, § 2.

66-204 Clean-burning Motor Fuel Development Fund; created; use; investment.

(1) The Clean-burning Motor Fuel Development Fund is created. The fund shall consist of grants, private contributions, and all other sources.

(2) The fund shall be used by the State Energy Office to provide rebates under the Nebraska Clean-burning Motor Fuel Development Act up to the amount transferred under subsection (3) of this section. No more than thirty-five percent of the money in the fund annually shall be used as rebates for flex-fuel dispensers. The State Energy Office may use the fund for necessary costs in the administration of the act up to an amount not exceeding ten percent of the fund annually.

(3) Within five days after August 30, 2015, the State Treasurer shall transfer five hundred thousand dollars from the General Fund to the Clean-burning Motor Fuel Development Fund to carry out the Nebraska Clean-burning Motor Fuel Development Act.

(4) Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(5) The State Treasurer shall transfer two hundred thousand dollars from the Clean-burning Motor Fuel Development Fund to the General Fund on or before June 30, 2018, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

Source: Laws 2015, LB581, § 4; Laws 2016, LB902, § 3; Laws 2016, LB957, § 4; Laws 2017, LB331, § 31.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**ARTICLE 3
CARBON DIOXIDE EMISSIONS**

Section

66-301.

66-302.

Terms, defined.

Department of Environmental Quality; state plan for regulating carbon dioxide emissions; duties.

Section

- 66-303. State Energy Office; duties; report; contents; legislative vote.
 66-304. State plan; submit to Legislature.

66-301 Terms, defined.

For purposes of sections 66-301 to 66-304:

(1) Covered electric generating unit means a fossil fuel-fired electric generating unit existing within the state prior to August 30, 2015, that is subject to regulation under the federal emission guidelines;

(2) Federal emission guidelines means any final rules, regulations, guidelines, or other requirements that the United States Environmental Protection Agency may adopt for regulating carbon dioxide emissions from covered electric generating units under section 111(d) of the federal Clean Air Act, 42 U.S.C. 7411(d);

(3) State means the State of Nebraska; and

(4) State plan means any plan to establish and enforce carbon dioxide emission control measures that the Department of Environmental Quality may adopt to implement the obligations of the state under the federal emission guidelines.

Source: Laws 2015, LB469, § 1.

66-302 Department of Environmental Quality; state plan for regulating carbon dioxide emissions; duties.

The Department of Environmental Quality shall not submit a state plan for regulating carbon dioxide emissions from covered electric generating units to the United States Environmental Protection Agency until the department has provided a copy of the state plan to the State Energy Office. The department shall provide such copy to the State Energy Office prior to the submission deadline for the state plan set by the United States Environmental Protection Agency. If the United States Environmental Protection Agency extends the submission deadline, the department shall provide such copy to the State Energy Office at least one hundred twenty days prior to the extended submission deadline. Nothing in this section shall prevent the department from complying with federally prescribed deadlines.

Source: Laws 2015, LB469, § 2.

66-303 State Energy Office; duties; report; contents; legislative vote.

(1) After receiving the copy of the state plan under section 66-302, the State Energy Office shall prepare a report that assesses the effects of the state plan on:

(a) The electric power sector, including:

(i) The type and amount of electric generating capacity within the state that is likely to retire or switch to another fuel;

(ii) The stranded investment in electric generating capacity and other infrastructure;

(iii) The amount of investment necessary to offset retirements of electric generating capacity and maintain generation reserve margins;

(iv) Potential risks to electric reliability, including resource adequacy risks and transmission constraints; and

(v) The amount by which retail electricity prices within the state are forecast to increase or decrease; and

(b) Employment within the state, including direct and indirect employment effects within affected sectors of the state's economy.

(2) The State Energy Office shall complete the report required under this section within thirty days after receiving the copy of the state plan under section 66-302 and shall electronically submit to the Legislature a copy of such report.

(3) If the Legislature is in session when it receives the report, the Legislature may vote on a nonbinding legislative resolution endorsing or disapproving the state plan based on the findings of the report.

Source: Laws 2015, LB469, § 3.

66-304 State plan; submit to Legislature.

Upon submitting a state plan to the United States Environmental Protection Agency, the Department of Environmental Quality shall electronically submit to the Legislature a copy of the state plan.

Source: Laws 2015, LB469, § 4.

ARTICLE 4

MOTOR VEHICLE FUEL TAX

Cross References

Aircraft fuel tax, see sections 3-148 to 3-151.
Compressed Fuel Tax Act, see section 66-697.

Section	
66-401.	Transferred to section 66-482.
66-402.	Transferred to section 66-483.
66-403.	Transferred to section 66-484.
66-404.	Transferred to section 66-485.
66-405.	Repealed. Laws 1973, LB 528, § 20.
66-405.01.	Repealed. Laws 1981, LB 360, § 13.
66-406.	Repealed. Laws 1991, LB 627, § 148.
66-407.	Transferred to section 66-486.
66-408.	Transferred to section 66-487.
66-409.	Transferred to section 66-488.
66-410.	Transferred to section 66-489.
66-410.01.	Transferred to section 66-490.
66-410.02.	Transferred to section 66-491.
66-410.03.	Transferred to section 66-492.
66-410.04.	Transferred to section 66-493.
66-410.05.	Transferred to section 66-494.
66-410.06.	Repealed. Laws 1991, LB 627, § 148.
66-410.07.	Repealed. Laws 1991, LB 627, § 148.
66-411.	Transferred to section 66-495.
66-412.	Transferred to section 66-496.
66-413.	Repealed. Laws 1991, LB 627, § 148.
66-414.	Transferred to section 66-497.
66-415.	Transferred to section 66-498.
66-416.	Repealed. Laws 1986, LB 1027, § 226.
66-416.01.	Repealed. Laws 1986, LB 1027, § 226.
66-417.	Repealed. Laws 1973, LB 528, § 20.
66-418.	Repealed. Laws 1991, LB 627, § 148.

OILS, FUELS, AND ENERGY

Section	
66-418.01.	Repealed. Laws 1991, LB 627, § 148.
66-418.02.	Transferred to section 66-449.01.
66-418.03.	Repealed. Laws 1991, LB 627, § 148.
66-419.	Repealed. Laws 1991, LB 627, § 148.
66-420.	Transferred to section 66-4,103.
66-421.	Transferred to section 66-499.
66-422.	Repealed. Laws 1969, c. 530, § 9.
66-423.	Repealed. Laws 1969, c. 530, § 9.
66-423.01.	Transferred to section 66-4,101.
66-423.02.	Transferred to section 66-4,102.
66-424.	Transferred to section 66-4,100.
66-424.01.	Repealed. Laws 1969, c. 530, § 9.
66-424.02.	Repealed. Laws 1969, c. 530, § 9.
66-424.03.	Repealed. Laws 1971, LB 33, § 1.
66-425.	Repealed. Laws 1959, c. 175, § 34.
66-426.	Repealed. Laws 1957, c. 284, § 3.
66-426.01.	Transferred to section 66-4,104.
66-427.	Repealed. Laws 1991, LB 627, § 148.
66-428.	Transferred to section 66-4,105.
66-429.	Transferred to section 66-4,106.
66-430.	Repealed. Laws 1991, LB 627, § 148.
66-431.	Repealed. Laws 1991, LB 627, § 148.
66-432.	Repealed. Laws 1991, LB 627, § 148.
66-433.	Transferred to section 66-4,107.
66-434.	Transferred to section 66-4,108.
66-435.	Transferred to section 66-4,109.
66-436.	Transferred to section 66-4,110.
66-437.	Transferred to section 66-4,111.
66-438.	Transferred to section 66-4,112.
66-439.	Transferred to section 66-4,113.
66-440.	Transferred to section 66-4,117.
66-441.	Transferred to section 66-4,114.
66-442.	Transferred to section 66-4,115.
66-443.	Repealed. Laws 1991, LB 627, § 148.
66-444.	Transferred to section 66-4,116.
66-445.	Transferred to section 66-4,118.
66-446.	Transferred to section 66-4,119.
66-447.	Transferred to section 66-4,120.
66-448.	Transferred to section 66-4,121.
66-449.	Transferred to section 66-4,122.
66-449.01.	Transferred to section 66-4,130.
66-450.	Transferred to section 66-4,123.
66-451.	Repealed. Laws 1991, LB 627, § 148.
66-452.	Transferred to section 66-4,124.
66-453.	Repealed. Laws 1991, LB 627, § 148.
66-454.	Repealed. Laws 1991, LB 627, § 148.
66-455.	Repealed. Laws 1991, LB 627, § 148.
66-456.	Repealed. Laws 1991, LB 627, § 148.
66-457.	Repealed. Laws 1991, LB 627, § 148.
66-458.	Transferred to section 66-4,125.
66-459.	Transferred to section 66-4,126.
66-460.	Transferred to section 66-4,127.
66-461.	Transferred to section 66-4,128.
66-461.01.	Transferred to section 66-4,129.
66-462.	Transferred to section 66-4,131.
66-463.	Repealed. Laws 1972, LB 343, § 25.
66-464.	Repealed. Laws 1991, LB 627, § 148.
66-465.	Transferred to section 66-4,132.
66-465.01.	Repealed. Laws 1991, LB 11, § 2.
66-466.	Repealed. Laws 1991, LB 627, § 148.
66-467.	Transferred to section 66-4,133.

MOTOR VEHICLE FUEL TAX

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66-467.01.	Transferred to section 66-4,134.
66-468.	Transferred to section 66-4,135.
66-469.	Transferred to section 66-4,136.
66-470.	Transferred to section 66-4,137.
66-471.	Transferred to section 66-4,138.
66-472.	Transferred to section 66-4,139.
66-473.	Transferred to section 66-4,140.
66-474.	Transferred to section 66-4,141.
66-474.01.	Transferred to section 66-4,142.
66-475.	Transferred to section 66-4,143.
66-476.	Transferred to section 66-4,144.
66-477.	Transferred to section 66-4,145.
66-478.	Transferred to section 66-4,146.
66-479.	Transferred to section 66-4,147.
66-480.	Transferred to section 66-4,148.
66-481.	Transferred to section 66-4,149.
66-482.	Terms, defined.
66-483.	Producer, supplier, distributor, wholesaler, importer, or exporter; application for license; contents.
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66-487.	Producer, supplier, distributor, wholesaler, exporter, and importer; records required.
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66-489.	Producer, supplier, distributor, wholesaler, or importer; motor fuel tax; excise tax; amount; when payable; exemptions; equalization fee; section, how construed; refund.
66-489.01.	Motor fuels blending agent or fuel expander; when taxed.
66-489.02.	Producer, supplier, distributor, wholesaler, or importer; tax on average wholesale price of gasoline; credit to Highway Trust Fund; use; allocation.
66-490.	Repealed. Laws 2004, LB 983, § 71.
66-491.	Repealed. Laws 2004, LB 983, § 71.
66-492.	Repealed. Laws 2004, LB 983, § 71.
66-493.	Repealed. Laws 2000, LB 1067, § 37.
66-494.	Repealed. Laws 2004, LB 983, § 71.
66-495.	Purchase of undyed diesel fuel; exemption certificate; requirements; prohibited acts; penalty.
66-495.01.	Diesel fuels; restrictions on use; inspections authorized; violations; penalties; government vehicles; treatment.
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66-498.	Tax previously paid; credit allowed; when.
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66-4,100.	Highway Cash Fund; Roads Operations Cash Fund; created; use; investment.
66-4,101.	Highway Allocation Fund; share of counties and municipalities; how used.
66-4,102.	Highway Allocation Fund; street intersection, defined.
66-4,103.	Interstate commerce exemption.
66-4,104.	Transferred to section 66-525.
66-4,105.	Motor fuels; use; excise tax; amount; use, defined.
66-4,106.	Excise tax; payment; report; duty to collect.
66-4,107.	Transferred to section 66-526.
66-4,108.	Transferred to section 66-527.
66-4,109.	Transferred to section 66-528.
66-4,110.	Transferred to section 66-529.
66-4,111.	Transferred to section 66-530.

Section	
66-4,112.	Transferred to section 66-531.
66-4,113.	Transferred to section 66-719.01.
66-4,114.	Motor fuels; importation; liable for tax; exception.
66-4,115.	Repealed. Laws 2000, LB 1067, § 37.
66-4,116.	Motor fuels; transportation; interstate commerce exempt.
66-4,117.	Motor vehicle fuel tax law; enforcement; rules and regulations.
66-4,118.	Repealed. Laws 2004, LB 983, § 71.
66-4,119.	Repealed. Laws 2004, LB 983, § 71.
66-4,120.	Repealed. Laws 2004, LB 983, § 71.
66-4,121.	Repealed. Laws 2004, LB 983, § 71.
66-4,122.	Repealed. Laws 2001, LB 168, § 15.
66-4,123.	Repealed. Laws 2001, LB 168, § 15.
66-4,124.	Repealed. Laws 2004, LB 983, § 71.
66-4,124.01.	Tax credit gasoline; certain purchases; repeal of section, effect.
66-4,125.	Repealed. Laws 2004, LB 983, § 71.
66-4,126.	Repealed. Laws 2004, LB 983, § 71.
66-4,127.	Repealed. Laws 2004, LB 983, § 71.
66-4,128.	Repealed. Laws 2004, LB 983, § 71.
66-4,129.	Repealed. Laws 2004, LB 983, § 71.
66-4,130.	Repealed. Laws 2004, LB 983, § 71.
66-4,131.	Repealed. Laws 2004, LB 983, § 71.
66-4,132.	Repealed. Laws 2004, LB 983, § 71.
66-4,133.	Repealed. Laws 1993, LB 364, § 26.
66-4,134.	Repealed. Laws 2004, LB 983, § 71.
66-4,135.	Repealed. Laws 1993, LB 364, § 26.
66-4,136.	Repealed. Laws 1993, LB 364, § 26.
66-4,137.	Repealed. Laws 1993, LB 364, § 26.
66-4,138.	See note.
66-4,139.	See note.
66-4,140.	Motor fuels; excise tax; disposition; payment.
66-4,141.	Excise tax; tax rate per gallon; computations.
66-4,142.	Repealed. Laws 2004, LB 983, § 71.
66-4,143.	Materiel administrator; submit report; contents.
66-4,144.	Highway Restoration and Improvement Bond Fund; Highway Cash Fund; maintain adequate balance; setting of excise tax rates; procedure; Department of Transportation; provide information.
66-4,145.	Additional excise tax.
66-4,146.	Fuels; use; additional excise tax.
66-4,146.01.	Floor-stocks tax on agricultural ethyl alcohol; rate; payment.
66-4,147.	Receipts from excise tax; disposition.
66-4,147.01.	Taxes, interest, and penalties; disposition.
66-4,148.	Highway Allocation Fund; distribution of funds.
66-4,149.	Rules and regulations.

66-401 Transferred to section 66-482.

66-402 Transferred to section 66-483.

66-403 Transferred to section 66-484.

66-404 Transferred to section 66-485.

66-405 Repealed. Laws 1973, LB 528, § 20.

66-405.01 Repealed. Laws 1981, LB 360, § 13.

66-406 Repealed. Laws 1991, LB 627, § 148.

66-407 Transferred to section 66-486.

66-408 Transferred to section 66-487.

- 66-409 Transferred to section 66-488.
- 66-410 Transferred to section 66-489.
- 66-410.01 Transferred to section 66-490.
- 66-410.02 Transferred to section 66-491.
- 66-410.03 Transferred to section 66-492.
- 66-410.04 Transferred to section 66-493.
- 66-410.05 Transferred to section 66-494.
- 66-410.06 Repealed. Laws 1991, LB 627, § 148.
- 66-410.07 Repealed. Laws 1991, LB 627, § 148.
- 66-411 Transferred to section 66-495.
- 66-412 Transferred to section 66-496.
- 66-413 Repealed. Laws 1991, LB 627, § 148.
- 66-414 Transferred to section 66-497.
- 66-415 Transferred to section 66-498.
- 66-416 Repealed. Laws 1986, LB 1027, § 226.
- 66-416.01 Repealed. Laws 1986, LB 1027, § 226.
- 66-417 Repealed. Laws 1973, LB 528, § 20.
- 66-418 Repealed. Laws 1991, LB 627, § 148.
- 66-418.01 Repealed. Laws 1991, LB 627, § 148.
- 66-418.02 Transferred to section 66-449.01.
- 66-418.03 Repealed. Laws 1991, LB 627, § 148.
- 66-419 Repealed. Laws 1991, LB 627, § 148.
- 66-420 Transferred to section 66-4,103.
- 66-421 Transferred to section 66-499.
- 66-422 Repealed. Laws 1969, c. 530, § 9.
- 66-423 Repealed. Laws 1969, c. 530, § 9.
- 66-423.01 Transferred to section 66-4,101.
- 66-423.02 Transferred to section 66-4,102.
- 66-424 Transferred to section 66-4,100.
- 66-424.01 Repealed. Laws 1969, c. 530, § 9.
- 66-424.02 Repealed. Laws 1969, c. 530, § 9.

- 66-424.03 Repealed. Laws 1971, LB 33, § 1.
- 66-425 Repealed. Laws 1959, c. 175, § 34.
- 66-426 Repealed. Laws 1957, c. 284, § 3.
- 66-426.01 Transferred to section 66-4,104.
- 66-427 Repealed. Laws 1991, LB 627, § 148.
- 66-428 Transferred to section 66-4,105.
- 66-429 Transferred to section 66-4,106.
- 66-430 Repealed. Laws 1991, LB 627, § 148.
- 66-431 Repealed. Laws 1991, LB 627, § 148.
- 66-432 Repealed. Laws 1991, LB 627, § 148.
- 66-433 Transferred to section 66-4,107.
- 66-434 Transferred to section 66-4,108.
- 66-435 Transferred to section 66-4,109.
- 66-436 Transferred to section 66-4,110.
- 66-437 Transferred to section 66-4,111.
- 66-438 Transferred to section 66-4,112.
- 66-439 Transferred to section 66-4,113.
- 66-440 Transferred to section 66-4,117.
- 66-441 Transferred to section 66-4,114.
- 66-442 Transferred to section 66-4,115.
- 66-443 Repealed. Laws 1991, LB 627, § 148.
- 66-444 Transferred to section 66-4,116.
- 66-445 Transferred to section 66-4,118.
- 66-446 Transferred to section 66-4,119.
- 66-447 Transferred to section 66-4,120.
- 66-448 Transferred to section 66-4,121.
- 66-449 Transferred to section 66-4,122.
- 66-449.01 Transferred to section 66-4,130.
- 66-450 Transferred to section 66-4,123.
- 66-451 Repealed. Laws 1991, LB 627, § 148.
- 66-452 Transferred to section 66-4,124.

- 66-453 Repealed. Laws 1991, LB 627, § 148.
- 66-454 Repealed. Laws 1991, LB 627, § 148.
- 66-455 Repealed. Laws 1991, LB 627, § 148.
- 66-456 Repealed. Laws 1991, LB 627, § 148.
- 66-457 Repealed. Laws 1991, LB 627, § 148.
- 66-458 Transferred to section 66-4,125.
- 66-459 Transferred to section 66-4,126.
- 66-460 Transferred to section 66-4,127.
- 66-461 Transferred to section 66-4,128.
- 66-461.01 Transferred to section 66-4,129.
- 66-462 Transferred to section 66-4,131.
- 66-463 Repealed. Laws 1972, LB 343, § 25.
- 66-464 Repealed. Laws 1991, LB 627, § 148.
- 66-465 Transferred to section 66-4,132.
- 66-465.01 Repealed. Laws 1991, LB 11, § 2.
- 66-466 Repealed. Laws 1991, LB 627, § 148.
- 66-467 Transferred to section 66-4,133.
- 66-467.01 Transferred to section 66-4,134.
- 66-468 Transferred to section 66-4,135.
- 66-469 Transferred to section 66-4,136.
- 66-470 Transferred to section 66-4,137.
- 66-471 Transferred to section 66-4,138.
- 66-472 Transferred to section 66-4,139.
- 66-473 Transferred to section 66-4,140.
- 66-474 Transferred to section 66-4,141.
- 66-474.01 Transferred to section 66-4,142.
- 66-475 Transferred to section 66-4,143.
- 66-476 Transferred to section 66-4,144.
- 66-477 Transferred to section 66-4,145.
- 66-478 Transferred to section 66-4,146.
- 66-479 Transferred to section 66-4,147.

66-480 Transferred to section 66-4,148.

66-481 Transferred to section 66-4,149.

66-482 Terms, defined.

For purposes of sections 66-482 to 66-4,149:

- (1) Motor vehicle shall have the same definition as in section 60-339;
- (2) Motor vehicle fuel shall include all products and fuel commonly or commercially known as gasoline, including casing head or natural gasoline, and shall include any other liquid and such other volatile and inflammable liquids as may be produced, compounded, or used for the purpose of operating or propelling motor vehicles, motorboats, or aircraft or as an ingredient in the manufacture of such fuel. Agricultural ethyl alcohol produced for use as a motor vehicle fuel shall be considered a motor vehicle fuel. Motor vehicle fuel shall not include the products commonly known as methanol, kerosene oil, kerosene distillate, crude petroleum, naphtha, and benzine with a boiling point over two hundred degrees Fahrenheit, residuum gas oil, smudge oil, leaded automotive racing fuel with an American Society of Testing Materials research method octane number in excess of one hundred five, and any petroleum product with an initial boiling point under two hundred degrees Fahrenheit, a ninety-five percent distillation (recovery) temperature in excess of four hundred sixty-four degrees Fahrenheit, an American Society of Testing Materials research method octane number less than seventy, and an end or dry point of distillation of five hundred seventy degrees Fahrenheit maximum;
- (3) Agricultural ethyl alcohol shall mean ethyl alcohol produced from cereal grains or agricultural commodities grown within the continental United States and which is a finished product that is a nominally anhydrous ethyl alcohol meeting American Society for Testing and Materials D4806 standards. For the purpose of sections 66-482 to 66-4,149, the purity of the ethyl alcohol shall be determined excluding denaturant and the volume of alcohol blended with gasoline for motor vehicle fuel shall include the volume of any denaturant required pursuant to law;
- (4) Alcohol blend shall mean a blend of agricultural ethyl alcohol in gasoline or other motor vehicle fuel, such blend to contain not less than five percent by volume of alcohol;
- (5) Supplier shall mean any person who owns motor fuels imported by barge, barge line, or pipeline and stored at a barge, barge line, or pipeline terminal in this state;
- (6) Distributor shall mean any person who acquires ownership of motor fuels directly from a producer or supplier at or from a barge, barge line, pipeline terminal, or ethanol or biodiesel facility in this state;
- (7) Wholesaler shall mean any person, other than a producer, supplier, distributor, or importer, who acquires motor fuels for resale;
- (8) Retailer shall mean any person who acquires motor fuels from a producer, supplier, distributor, wholesaler, or importer for resale to consumers of such fuel;
- (9) Importer shall mean any person who owns motor fuels at the time such fuels enter the State of Nebraska by any means other than barge, barge line, or pipeline. Importer shall not include a person who imports motor fuels in a tank directly connected to the engine of a motor vehicle, train, watercraft, or

airplane for purposes of providing fuel to the engine to which the tank is connected;

(10) Exporter shall mean any person who acquires ownership of motor fuels from any licensed producer, supplier, distributor, wholesaler, or importer exclusively for use or resale in another state;

(11) Gross gallons shall mean measured gallons without adjustment or correction for temperature or barometric pressure;

(12) Diesel fuel shall mean all combustible liquids and biodiesel which are suitable for the generation of power for diesel-powered vehicles, except that diesel fuel shall not include kerosene;

(13) Compressed fuel shall mean any fuel defined as compressed fuel in section 66-6,100;

(14) Person shall mean any individual, firm, partnership, limited liability company, company, agency, association, corporation, state, county, municipality, or other political subdivision. Whenever a fine or imprisonment is prescribed or imposed in sections 66-482 to 66-4,149, the word person as applied to a partnership, a limited liability company, or an association shall mean the partners or members thereof;

(15) Department shall mean the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue;

(16) Semiannual period shall mean either the period which begins on January 1 and ends on June 30 of each year or the period which begins on July 1 and ends on December 31 of each year;

(17) Producer shall mean any person who manufactures agricultural ethyl alcohol or biodiesel at an ethanol or biodiesel facility in this state;

(18) Highway shall mean every way or place generally open to the use of the public for the purpose of vehicular travel, even though such way or place may be temporarily closed or travel thereon restricted for the purpose of construction, maintenance, repair, or reconstruction;

(19) Kerosene shall mean kerosene meeting the specifications as found in the American Society for Testing and Materials publication D3699 entitled Standard Specifications for Kerosene;

(20) Biodiesel shall mean mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats which conform to American Society for Testing and Materials D6751 specifications for use in diesel engines. Biodiesel refers to the pure fuel before blending with diesel fuel;

(21) Motor fuels shall mean motor vehicle fuel, diesel fuel, aircraft fuel, or compressed fuel;

(22) Ethanol facility shall mean a plant which produces agricultural ethyl alcohol; and

(23) Biodiesel facility shall mean a plant which produces biodiesel.

Source: Laws 1925, c. 172, § 1, p. 448; Laws 1929, c. 150, § 1, p. 525; C.S.1929, § 66-401; Laws 1935, c. 3, § 15, p. 63; Laws 1935, Spec. Sess., c. 13, § 1, p. 86; Laws 1939, c. 86, § 1, p. 366; C.S.Supp.,1941, § 66-401; R.S.1943, § 66-401; Laws 1955, c. 246, § 1, p. 777; Laws 1963, c. 377, § 1, p. 1214; Laws 1963, c. 375, § 2, p. 1206; Laws 1981, LB 360, § 1; Laws 1987, LB 523, § 5; Laws 1988, LB 1039, § 1; R.S.1943, (1990), § 66-401; Laws

1991, LB 627, § 9; Laws 1993, LB 121, § 395; Laws 1994, LB 1160, § 55; Laws 1995, LB 182, § 28; Laws 1996, LB 1121, § 1; Laws 1998, LB 1161, § 14; Laws 2004, LB 479, § 1; Laws 2004, LB 983, § 5; Laws 2005, LB 274, § 267; Laws 2008, LB846, § 2; Laws 2014, LB851, § 6.

Cross References

For additional definitions, see section 66-712.

Motor fuels tax law is constitutional. *State v. Cheyenne County*, 127 Neb. 619, 256 N.W. 67 (1934).

Dry cleaner's solvents capable of use for operating motor vehicles are subject to tax. *Pantorium v. McLaughlin*, 116 Neb. 61, 215 N.W. 798 (1927).

The Nebraska gasoline tax is an excise tax upon use of gasoline, and is collected for convenience from the dealer. *Standard Oil Co. v. Kurtz*, 330 F.2d 178 (8th Cir. 1964).

66-483 Producer, supplier, distributor, wholesaler, importer, or exporter; application for license; contents.

Before engaging in business as a producer, supplier, distributor, wholesaler, importer, or exporter, a person shall file an application with the department. The application shall be filed upon a form prepared and furnished by the department. If the applicant is an individual, the application shall include the applicant's social security number. The application shall contain such information as the department deems necessary.

Source: Laws 1925, c. 172, § 2, p. 449; Laws 1929, c. 149, § 1, p. 520; C.S.1929, § 66-402; Laws 1933, c. 106, § 1, p. 433; C.S.Supp.,1941, § 66-402; R.S.1943, § 66-402; R.S.1943, (1990), § 66-402; Laws 1991, LB 627, § 10; Laws 1992, LB 1013, § 3; Laws 1994, LB 1160, § 56; Laws 1997, LB 752, § 149; Laws 2004, LB 983, § 6.

66-484 Producer, supplier, distributor, wholesaler, importer, or exporter; license required.

Before engaging in business as a producer, supplier, distributor, wholesaler, importer, or exporter, a person shall procure a license from the department permitting him or her to transact such business within the State of Nebraska. After reviewing the application required in section 66-483, the department may issue a license as provided in this section.

Source: Laws 1925, c. 172, § 3, p. 449; Laws 1929, c. 149, § 2, p. 521; C.S.1929, § 66-403; Laws 1931, c. 114, § 1, p. 333; Laws 1933, c. 106, § 2, p. 434; C.S.Supp.,1941, § 66-403; R.S.1943, § 66-403; Laws 1969, c. 528, § 1, p. 2160; Laws 1973, LB 528, § 1; Laws 1981, LB 360, § 2; R.S.1943, (1990), § 66-403; Laws 1991, LB 627, § 11; Laws 1994, LB 1160, § 57; Laws 2004, LB 983, § 7.

Increase in tax does not relieve sureties from obligation on bond. *State v. Smith*, 135 Neb. 423, 281 N.W. 851 (1938).

66-485 Producer, supplier, distributor, wholesaler, exporter, or importer; security.

The department, for the first year of a new license or whenever it deems it necessary to insure compliance with sections 66-482 to 66-4,149, may require any producer, supplier, distributor, wholesaler, exporter, or importer subject to such sections to place with the department such security as it determines. The amount and duration of the security shall be fixed by the department and shall

be approximately three times the total estimated average monthly tax liability payable by such producer, supplier, distributor, wholesaler, or importer pursuant to such sections. Such security shall consist of a surety bond executed by a surety company duly licensed and authorized to do business within this state in the amount specified by the department. In the case of an exporter, the amount and duration of the security shall be fixed by the department. Such security shall run to the Department of Revenue and be conditioned upon the payment of all taxes, interest, penalties, and costs for which such producer, supplier, distributor, wholesaler, exporter, or importer is liable, whether such liability was incurred prior to or after such security is filed.

Source: Laws 1933, c. 106, § 2, p. 434; C.S.Supp.,1941, § 66-403; R.S. 1943, § 66-404; Laws 1949, c. 186, § 1, p. 537; Laws 1969, c. 528, § 2, p. 2160; Laws 1973, LB 397, § 1; Laws 1973, LB 528, § 2; Laws 1981, LB 360, § 3; R.S.1943, (1990), § 66-404; Laws 1991, LB 627, § 12; Laws 1994, LB 1160, § 58; Laws 2000, LB 1067, § 1; Laws 2004, LB 983, § 8; Laws 2008, LB846, § 3.

66-486 Motor fuel tax; collection; commission.

(1) In lieu of the expense of collecting and remitting the motor vehicle fuel tax and furnishing the security pursuant to Chapter 66, article 4, and complying with the statutes and rules and regulations related thereto, the producer, supplier, distributor, wholesaler, or importer shall be entitled to deduct and withhold a commission of five percent on the first five thousand dollars and two and one-half percent upon all amounts above five thousand dollars remitted each reporting period.

(2) In lieu of the expense of collecting and remitting the diesel fuel tax and furnishing the security pursuant to Chapter 66, article 4, and complying with the statutes and rules and regulations related thereto, the producer, supplier, distributor, wholesaler, or importer shall be entitled to deduct and withhold a commission of two percent upon the first five thousand dollars and one-half of one percent upon all amounts in excess of five thousand dollars remitted each reporting period.

(3) Except as otherwise provided in Chapter 66, article 4, the per-gallon amount of the tax shall be added to the selling price of every gallon of such motor fuels sold in this state and shall be collected from the purchaser so that the ultimate consumer bears the burden of the tax. The tax shall be a direct tax on the retail or ultimate consumer precollected for the purpose of convenience and facility to the consumer. The levy and assessment on the producer, supplier, distributor, wholesaler, or importer as specified in Chapter 66, article 4, shall be as agents of the state for the precollection of the tax. The provisions of this section shall in no way affect the method of collecting the tax as provided in Chapter 66, article 4. The tax imposed by this section shall be collected and paid at the time, in the manner, and by those persons specified in Chapter 66, article 4.

(4) In consideration of receiving the commission, the producer, supplier, distributor, wholesaler, or importer shall not be entitled to any deductions, credits, or refunds arising out of such producer's, supplier's, distributor's, wholesaler's, or importer's failure or inability to collect any such taxes from any subsequent purchaser of motor fuels.

(5) For purposes of this section, reporting period means calendar month unless otherwise provided by rules and regulations of the department, but under no circumstance shall such reporting period extend beyond an annual basis.

(6) A producer, supplier, distributor, wholesaler, or importer shall not be entitled to the commission provided under subsection (1) or (2) of this section for the amount of any understatement of or refund of any such taxes collected as a result of a final assessment occurring pursuant to a notice of deficiency determination under section 66-722.

Source: Laws 1933, c. 106, § 2, p. 435; C.S.Supp.,1941, § 66-403; R.S. 1943, § 66-407; Laws 1969, c. 528, § 3, p. 2160; Laws 1973, LB 528, § 4; R.S.1943, (1990), § 66-407; Laws 1991, LB 627, § 13; Laws 1994, LB 1160, § 59; Laws 1998, LB 1161, § 15; Laws 2001, LB 168, § 1; Laws 2004, LB 983, § 9; Laws 2012, LB727, § 16.

The commission allowance characterized the dealer as a collection agent. *Standard Oil Co. v. Kurtz*, 330 F.2d 178 (8th Cir. 1964).

66-487 Producer, supplier, distributor, wholesaler, exporter, and importer; records required.

(1) Every licensed producer, supplier, distributor, wholesaler, exporter, and importer shall keep a complete and accurate record of all gallonage of motor fuels, to be based on gross gallons, received, purchased, refined, manufactured, or obtained and imported by a producer, supplier, distributor, wholesaler, or importer, which record shall show the name and address of the person from whom each transfer or purchase of motor fuels so received or imported was made, the point from which shipped or delivered, the point at which received, the method of delivery, the quantity of each transfer or purchase, and a complete and accurate record of the number of gallons, to be based on gross gallons, of motor fuels imported, produced, refined, manufactured, or compounded and the date of importation, production, refining, manufacturing, or compounding. If any licensed producer, supplier, distributor, wholesaler, or importer sells to another licensed producer, supplier, distributor, wholesaler, importer, or exporter any motor fuels, such seller shall keep as part of its records the name, address, and license number of the producer, supplier, distributor, wholesaler, importer, or exporter to whom the motor fuels were sold along with the date, quantity, and location where the motor fuels were sold.

(2) Every licensed producer, supplier, distributor, wholesaler, exporter, and importer shall include the information prescribed in subsection (1) of this section with the return required by section 66-488.

(3) The records required by this section shall be retained and be available for audit and examination by the department or its authorized agents during regular business hours for a period of three years following the date of filing fuel tax reports supported by such records or for a period of five years if the required reports are not filed.

Source: Laws 1925, c. 172, § 4, p. 450; Laws 1927, c. 151, § 1, p. 405; Laws 1929, c. 149, § 3, p. 521; C.S.1929, § 66-404; Laws 1933, c. 106, § 3, p. 435; C.S.Supp.,1941, § 66-404; R.S.1943, § 66-408;

Laws 1967, c. 397, § 2, p. 1246; Laws 1988, LB 1039, § 2; R.S.1943, (1990), § 66-408; Laws 1991, LB 627, § 14; Laws 1994, LB 1160, § 60; Laws 2000, LB 1067, § 2; Laws 2001, LB 168, § 2; Laws 2004, LB 983, § 10.

66-488 Producer, supplier, distributor, wholesaler, importer, and exporter; return; contents.

(1) Every producer, supplier, distributor, wholesaler, importer, and exporter who engages in the sale, distribution, delivery, and use of motor fuels shall render and have on file with the department a return reporting the number of gallons of motor fuels, based on gross gallons, received, imported, or exported and unloaded and emptied or caused to be received, imported, or exported and unloaded and emptied by such producer, supplier, distributor, wholesaler, or importer in the State of Nebraska and the number of gallons of motor fuels produced, refined, manufactured, blended, or compounded by such producer, supplier, distributor, wholesaler, or importer within the State of Nebraska, during the preceding reporting period, and defining the nature of such motor fuels. The return shall also show such information as the department reasonably requires for the proper administration and enforcement of sections 66-482 to 66-4,149. The return shall contain a declaration, by the person making the same, to the effect that the statements contained therein are true and are made under penalties of perjury, which declaration shall have the same force and effect as a verification of the return and shall be in lieu of such verification. The return shall be signed by the producer, supplier, distributor, wholesaler, importer, or exporter or a principal officer, general agent, managing agent, attorney in fact, chief accountant, or other responsible representative of the producer, supplier, distributor, wholesaler, importer, or exporter, and such return shall be entitled to be received in evidence in all courts of this state and shall be prima facie evidence of the facts therein stated. The producer, supplier, distributor, wholesaler, importer, or exporter shall file the return in such format as prescribed by the department on or before the twentieth day of the next succeeding calendar month following the reporting period to which it relates. If the final filing date for such return falls on a Saturday, Sunday, or legal holiday, the next secular or business day shall be the final filing date. The return shall be considered filed on time if transmitted or postmarked before midnight of the final filing date.

(2) For purposes of this section, reporting period means calendar month unless otherwise provided by rules and regulations of the department, but under no circumstance shall such reporting period extend beyond an annual basis.

Source: Laws 1925, c. 172, § 5, p. 450; Laws 1927, c. 151, § 2, p. 406; Laws 1929, c. 149, § 4, p. 522; Laws 1929, c. 166, § 1, p. 572; C.S.1929, § 66-405; Laws 1931, c. 113, § 1, p. 331; Laws 1933, c. 106, § 4, p. 436; Laws 1933, c. 110, § 3, p. 448; Laws 1935, c. 161, § 1, p. 586; Laws 1935, Spec. Sess., c. 16, § 1, p. 127; Laws 1937, c. 148, § 1, p. 566; Laws 1939, c. 86, § 2, p. 367; Laws 1941, c. 133, § 1, p. 522; C.S.Supp.,1941, § 66-405; Laws 1943, c. 138, § 2(1), p. 473; Laws 1943, c. 141, § 1(1), p. 482; R.S.1943, § 66-409; Laws 1963, c. 376, § 2, p. 1210; R.S.1943, (1990),

§ 66-409; Laws 1991, LB 627, § 15; Laws 1994, LB 1160, § 61; Laws 2000, LB 1067, § 3; Laws 2001, LB 168, § 3; Laws 2004, LB 983, § 11; Laws 2008, LB846, § 4; Laws 2012, LB727, § 17.

66-489 Producer, supplier, distributor, wholesaler, or importer; motor fuel tax; excise tax; amount; when payable; exemptions; equalization fee; section, how construed; refund.

(1)(a) At the time of filing the return required by section 66-488, such producer, supplier, distributor, wholesaler, or importer shall, in addition to the tax imposed pursuant to sections 66-489.02, 66-4,140, 66-4,145, and 66-4,146 and in addition to the other taxes provided for by law, pay a tax in an amount set in subdivision (b) of this subsection upon all motor fuels as shown by such return, except that there shall be no tax on the motor fuels reported if (i) the required taxes on the motor fuels have been paid, (ii) the motor fuels have been sold to a licensed exporter exclusively for resale or use in another state, (iii) the motor fuels have been sold from a Nebraska barge line terminal, pipeline terminal, refinery, or ethanol or biodiesel facility, including motor fuels stored offsite in bulk, by a licensed producer or supplier to a licensed distributor, (iv) the motor fuels have been sold by a licensed distributor or licensed importer to a licensed distributor or to a licensed wholesaler and the seller acquired ownership of the motor fuels directly from a licensed producer or supplier at or from a refinery, barge, barge line, pipeline terminal, or ethanol or biodiesel facility, including motor fuels stored offsite in bulk, in this state or was the first importer of such fuel into this state, or (v) as otherwise provided in this section. Such producer, supplier, distributor, wholesaler, or importer shall remit such tax to the department.

(b) The tax shall be:

(i) Seven and one-half cents per gallon through December 31, 2015;

(ii) Eight cents per gallon beginning on January 1, 2016, through December 31, 2016;

(iii) Eight and one-half cents per gallon beginning on January 1, 2017, through December 31, 2017;

(iv) Nine cents per gallon beginning on January 1, 2018, through December 31, 2018; and

(v) Nine and one-half cents per gallon beginning on January 1, 2019.

(2) As part of filing the return required by section 66-488, each producer of ethanol shall, in addition to other taxes imposed by the motor fuel laws, pay an excise tax of one and one-quarter cents per gallon through December 31, 2004, and commencing January 1, 2010, and two and one-half cents per gallon commencing January 1, 2005, through December 31, 2009, on natural gasoline purchased for use as a denaturant by the producer at an ethanol facility. All taxes, interest, and penalties collected under this subsection shall be remitted to the State Treasurer for credit to the Agricultural Alcohol Fuel Tax Fund, except that commencing January 1, 2005, through December 31, 2009, one and one-quarter cents per gallon of such excise tax shall be credited to the Ethanol Production Incentive Cash Fund. For fiscal years 2007-08 through 2011-12, if the total receipts from the excise tax authorized in this subsection and designated for deposit in the Agricultural Alcohol Fuel Tax Fund exceed five hundred fifty thousand dollars, the State Treasurer shall deposit amounts in excess of

five hundred fifty thousand dollars in the Ethanol Production Incentive Cash Fund.

(3)(a) Motor fuels, methanol, and all blending agents or fuel expanders shall be exempt from the taxes imposed by this section and sections 66-489.02, 66-4,105, 66-4,140, 66-4,145, and 66-4,146, when the fuels are used for buses equipped to carry more than seven persons for hire and engaged entirely in the transportation of passengers for hire within municipalities or within a radius of six miles thereof.

(b) The owner or agent of any bus equipped to carry more than seven persons for hire and engaged entirely in the transportation of passengers for hire within municipalities, or within a radius of six miles thereof, in lieu of the excise tax provided for in this section, shall pay an equalization fee of a sum equal to twice the amount of the registration fee applicable to such vehicle under the laws of this state. Such equalization fee shall be paid in the same manner as the registration fee and be disbursed and allocated as registration fees.

(c) Nothing in this section shall be construed as permitting motor fuels to be sold tax exempt. The department shall refund tax paid on motor fuels used in buses deemed exempt by this section.

(4) Natural gasoline purchased for use as a denaturant by a producer at an ethanol facility as defined in section 66-1333 shall be exempt from the motor fuels tax imposed by subsection (1) of this section as well as the tax imposed pursuant to sections 66-489.02, 66-4,140, 66-4,145, and 66-4,146.

(5) Unless otherwise provided by an agreement entered into between the State of Nebraska and the governing body of any federally recognized Indian tribe within the State of Nebraska, motor fuels purchased on a Nebraska Indian reservation where the purchaser is a Native American who resides on the reservation shall be exempt from the motor fuels tax imposed by this section as well as the tax imposed pursuant to sections 66-489.02, 66-4,140, 66-4,145, and 66-4,146.

(6) Motor fuels purchased for use by the United States Government or its agencies shall be exempt from the motor fuels tax imposed by this section as well as the tax imposed pursuant to sections 66-489.02, 66-4,140, 66-4,145, and 66-4,146.

(7) In the case of diesel fuel, there shall be no tax on the motor fuels reported if (a) the diesel fuel has been indelibly dyed and chemically marked in accordance with regulations issued by the Secretary of the Treasury of the United States under 26 U.S.C. 4082 or (b) the diesel fuel contains a concentration of sulphur in excess of five-hundredths percent by weight or fails to meet a cetane index minimum of forty and has been indelibly dyed in accordance with regulations promulgated by the Administrator of the Environmental Protection Agency pursuant to 42 U.S.C. 7545.

Source: Laws 1925, c. 172, § 5, p. 450; Laws 1927, c. 151, § 2, p. 406; Laws 1929, c. 149, § 4, p. 522; Laws 1929, c. 166, § 1, p. 572; C.S.1929, § 66-405; Laws 1931, c. 113, § 1, p. 331; Laws 1933, c. 106, § 4, p. 436; Laws 1933, c. 110, § 3, p. 449; Laws 1935, c. 161, § 1, p. 586; Laws 1935, Spec. Sess., c. 16, § 1, p. 128; Laws 1937, c. 148, § 1, p. 566; Laws 1939, c. 87, § 2, p. 367; Laws 1941, c. 133, § 1, p. 523; C.S.Supp.,1941, § 66-405; Laws 1943, c. 138, § 2(2), p. 474; Laws 1943, c. 141, § 1(2), p. 483; R.S.1943, § 66-410; Laws 1953, c. 225, § 1, p. 792; Laws 1955, c. 247, § 1,

p. 780; Laws 1957, c. 282, § 1, p. 1028; Laws 1963, c. 376, § 3, p. 1211; Laws 1965, c. 391, § 1, p. 1249; Laws 1967, c. 397, § 3, p. 1248; Laws 1969, c. 528, § 4, p. 2161; Laws 1969, c. 529, § 1, p. 2167; Laws 1971, LB 776, § 2; Laws 1972, LB 1208, § 1; Laws 1977, LB 139, § 2; Laws 1977, LB 52, § 2; Laws 1979, LB 571, § 3; Laws 1980, LB 722, § 6; Laws 1981, LB 104, § 1; Laws 1981, LB 360, § 4; Laws 1985, LB 346, § 1; Laws 1988, LB 1039, § 3; Laws 1990, LB 1124, § 2; R.S.1943, (1990), § 66-410; Laws 1991, LB 627, § 16; Laws 1994, LB 1160, § 62; Laws 1996, LB 1121, § 3; Laws 2004, LB 983, § 12; Laws 2004, LB 1065, § 1; Laws 2006, LB 1003, § 5; Laws 2007, LB322, § 12; Laws 2008, LB846, § 5; Laws 2015, LB610, § 1.

Question of proper method of allocation and distribution of gas tax raised. *State ex rel. Heintze v. County of Adams*, 162 Neb. 127, 75 N.W.2d 539 (1956).

Tax is an excise tax upon use and distribution of gasoline in the state and does not violate the commerce clause or due process and equal protection clauses of the United States Constitution. *State v. Smith*, 135 Neb. 423, 281 N.W. 851 (1938); *Burke v. Bass*, 123 Neb. 297, 242 N.W. 606 (1932).

Supreme Court refused to entertain jurisdiction of suit, under declaratory judgments act, to declare gasoline tax collected under alleged unconstitutional act a trust fund. *Arlington Oil Co. v. Hall*, 130 Neb. 674, 266 N.W. 583 (1936).

This section, prior to its amendment in 1937, was declared unconstitutional as a violation of section 1, Article II, and section 1, Article III, Constitution of Nebraska. *Smithberger v. Banning*, 130 Neb. 354, 265 N.W. 10 (1936); *Smithberger v. Banning*, 129 Neb. 651, 262 N.W. 492 (1935).

County is not exempt from payment of excise tax. *State v. Cheyenne County*, 127 Neb. 619, 256 N.W. 67 (1934).

Dry cleaner's solvents capable of use for operating motor vehicles are subject to tax. *Pantorium v. McLaughlin*, 116 Neb. 61, 215 N.W. 798 (1927).

Tax imposed by this section has its realistic impact upon the consumer. *Standard Oil Co. v. Kurtz*, 330 F.2d 178 (8th Cir. 1964).

66-489.01 Motor fuels blending agent or fuel expander; when taxed.

Methanol, benzine, benzol, naphtha, kerosene, and any other volatile, flammable, or combustible liquid suitable for use as a motor fuels blending agent or fuel expander shall be exempt from the taxes imposed under sections 66-489, 66-489.02, 66-4,105, 66-4,140, 66-4,145, and 66-4,146 unless and until such methanol, benzine, benzol, naphtha, kerosene, or other blending agent or fuel expander is blended with motor fuels or placed directly into the supply tank of a licensed motor vehicle. Any person blending such products with motor fuels or placing such products into the supply tank of a licensed motor vehicle shall pay the taxes imposed under such sections directly to the department on forms provided by the department at the same time as the motor fuels with which it is blended become subject to taxation or, if the tax imposed on the motor fuels has already been paid, upon blending. The taxes imposed by this section shall not apply to fuel additives which are used to enhance engine performance or prevent fuel line freezing or clogging when placed directly into the supply tank of a motor vehicle in quantities of one quart or less.

Source: Laws 1996, LB 1121, § 2; Laws 2004, LB 983, § 13; Laws 2008, LB846, § 6.

66-489.02 Producer, supplier, distributor, wholesaler, or importer; tax on average wholesale price of gasoline; credit to Highway Trust Fund; use; allocation.

(1) For tax periods beginning on and after July 1, 2009, at the time of filing the return required by section 66-488, the producer, supplier, distributor, wholesaler, or importer shall, in addition to the other taxes provided for by law, pay a tax at the rate of five percent of the average wholesale price of gasoline for the gallons of the motor fuels as shown by the return, except that there shall

be no tax on the motor fuels reported if they are otherwise exempted by sections 66-482 to 66-4,149.

(2) The department shall calculate the average wholesale price of gasoline on April 1, 2009, and on each April 1 and October 1 thereafter. The average wholesale price on April 1 shall apply to returns for the tax periods beginning on and after July 1, and the average wholesale price on October 1 shall apply to returns for the tax periods beginning on and after January 1. The average wholesale price shall be determined using data available from the State Energy Office and shall be an average wholesale price per gallon of gasoline sold in the state over the previous six-month period, excluding any state or federal excise tax or environmental fees. The change in the average wholesale price between two six-month periods shall be adjusted so that the increase or decrease in the tax provided for in this section or section 66-6,109.02 does not exceed one cent per gallon.

(3) All sums of money received under this section shall be credited to the Highway Trust Fund. Credits and refunds of such tax allowed to producers, suppliers, distributors, wholesalers, or importers shall be paid from the Highway Trust Fund. The balance of the amount credited, after credits and refunds, shall be allocated as follows:

(a) Sixty-six percent to the Highway Cash Fund for the Department of Transportation;

(b) Seventeen percent to the Highway Allocation Fund for allocation to the various counties for road purposes; and

(c) Seventeen percent to the Highway Allocation Fund for allocation to the various municipalities for street purposes.

Source: Laws 2008, LB846, § 11; Laws 2012, LB727, § 18; Laws 2017, LB339, § 237.

66-490 Repealed. Laws 2004, LB 983, § 71.

66-491 Repealed. Laws 2004, LB 983, § 71.

66-492 Repealed. Laws 2004, LB 983, § 71.

66-493 Repealed. Laws 2000, LB 1067, § 37.

66-494 Repealed. Laws 2004, LB 983, § 71.

66-495 Purchase of undyed diesel fuel; exemption certificate; requirements; prohibited acts; penalty.

(1) A purchaser of undyed diesel fuel may present an exemption certificate to the seller when not more than fifty gallons of such fuel is placed directly into the supply tank of a temperature control unit or power take-off unit. To qualify for this exemption, the supply tank of the temperature control unit or power take-off unit cannot be connected to the engine which provides motive power to a motor vehicle or connected to any fuel supply tank connected to the engine of a motor vehicle.

(2) The seller of undyed diesel fuel may in good faith accept the exemption certificate and sell undyed diesel fuel without collecting the tax. The seller may accept an exemption certificate for multiple purchases. Such a certificate shall be renewed annually. If the seller is a producer, supplier, distributor, wholesal-

er, or importer, the seller may deduct the number of gallons sold without the tax from the return for the period during which the fuel was sold or for a subsequent period. If the seller is not a producer, supplier, distributor, wholesaler, or importer, the seller may provide a monthly exemption certificate to the producer, distributor, wholesaler, or importer or other supplier of the taxed diesel fuel for the total number of gallons of undyed diesel fuel sold without tax during the prior month.

(3) Receipt of an exemption certificate taken in good faith shall be conclusive proof for the seller that the sale was exempt.

(4) Any person who wrongfully claims an exemption and presents an exemption certificate shall be liable for the tax on the diesel fuel. The department shall, on the basis of information available, determine the tax that would have been due on such transaction and assess the tax against such person.

(5) Any person who unlawfully issues an exemption certificate shall be subject to an administrative penalty of one thousand dollars for each violation to be assessed and collected by the department. All such penalties collected shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

Source: Laws 2004, LB 983, § 14.

66-495.01 Diesel fuels; restrictions on use; inspections authorized; violations; penalties; government vehicles; treatment.

(1) Except as provided in subsection (5) of this section, the fuel supply tank of a motor vehicle registered or required to be registered for operation on the highway shall not contain or be used with undyed diesel fuel that has not been taxed or diesel fuel which contains any evidence of the dye or chemical marker added pursuant to the regulations promulgated under 26 U.S.C. 4082 or 42 U.S.C. 7545 indicating untaxed low-sulphur or high-sulphur diesel fuel.

(2) No retailer of diesel fuel shall sell or offer to sell diesel fuel that contains any evidence of the dye or chemical marker added pursuant to the regulations promulgated under 26 U.S.C. 4082 or 42 U.S.C. 7545 indicating untaxed low-sulphur or high-sulphur diesel fuel unless the fuel dispensing device is clearly marked with a notice that the fuel is dyed or chemically marked.

(3) Any law enforcement officer, any carrier enforcement officer, or any agent of the department who has reasonable grounds to suspect a violation of this section may inspect the fuel in the fuel supply tank of any motor vehicle or the fuel storage facilities and dispensing devices of any diesel fuel retailer to determine compliance with this section. Fuel inspections may also be conducted in the course of safety or other inspections authorized by law.

(4) Any person who violates any provision of this section or who refuses to permit an inspection authorized by this section shall be guilty of a Class IV misdemeanor and shall be subject to an administrative penalty of two hundred fifty dollars for the first such violation. If the person had another violation under this section within the last five years, the person shall be subject to an administrative penalty of one thousand dollars for the current violation. If the person had two or more violations under this section within the last five years, the person shall be subject to an administrative penalty of two thousand five hundred dollars for the current violation. All such penalties shall be assessed against the owner of the vehicle as of the date of the violation. The penalty shall

be assessed and collected by the department. All such penalties collected shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

(5) Any motor vehicle owned or leased by any state, county, municipality, or other political subdivision may be operated on the highways of this state with dyed diesel fuel, except high-sulphur diesel fuel dyed in accordance with regulations promulgated by the Administrator of the Environmental Protection Agency pursuant to 42 U.S.C. 7545, if the taxes imposed by sections 66-482 to 66-4,149 are paid to the department by the state, county, municipality, or other political subdivision. The state, county, municipality, or other political subdivision shall pay the tax and file a return concerning the tax to the department in like manner and form as is required under sections 66-489.02, 66-4,105, and 66-4,106.

(6) For purposes of this section:

(a) Owner means registered owner, titleholder, lessee entitled to possession of the motor vehicle, or anyone otherwise maintaining a possessory interest in the motor vehicle, but does not include anyone who, without participating in the use or operation of the motor vehicle and otherwise not engaged in the purpose for which the motor vehicle is being used, holds indicia of ownership primarily to protect his or her security interest in the motor vehicle or who acquired ownership of the motor vehicle pursuant to a foreclosure of a security interest in the motor vehicle; and

(b) Use means to operate, fuel, or otherwise employ.

Source: Laws 2004, LB 983, § 15; Laws 2008, LB846, § 7.

66-496 Stored fuel; payment of tax; when; reports.

(1) No tax shall be collected with respect to motor fuels imported by barge, barge line, or pipeline and stored at a barge, barge line, or pipeline terminal in this state or refined at a refinery in this state and stored thereat until the motor fuels are withdrawn for sale or use in this state or are loaded at the terminal or refinery into transportation equipment for shipment or delivery to a destination in this state. No tax shall be collected with respect to motor fuels manufactured at an ethanol or biodiesel facility in this state nor with respect to motor fuels owned by a producer, but stored at another location in this state, until the motor fuels are withdrawn for sale or use in this state or are loaded at the ethanol or biodiesel facility or other storage into transportation equipment for shipment or delivery to a destination in this state.

(2) When motor fuels are withdrawn or loaded as provided in this section, the producer, supplier, or distributor in this state shall be liable for payment of the motor fuels tax.

(3) The person owning and operating such refinery, barge, barge line terminal, pipeline terminal, or ethanol or biodiesel facility may, at the department's request, make and file such verified reports of operations within the state which may include reporting all motor fuels loaded within this state for delivery in another state and such other information as shall be required by the department.

Source: Laws 1935, c. 161, § 1, p. 588; Laws 1935, Spec. Sess., c. 16, § 1, p. 128; Laws 1937, c. 148, § 1, p. 567; Laws 1939, c. 87, § 2, p. 368; Laws 1941, c. 133, § 1, p. 524; C.S.Supp.,1941, § 66-405; Laws 1943, c. 138, § 2(5), p. 475; Laws 1943, c. 141, § 1(5), p.

484; R.S.1943, § 66-412; Laws 1955, c. 248, § 1, p. 783; Laws 1969, c. 528, § 9, p. 2164; Laws 1973, LB 528, § 7; Laws 1988, LB 1039, § 4; R.S.1943, (1990), § 66-412; Laws 1991, LB 627, § 23; Laws 1994, LB 1160, § 67; Laws 2004, LB 983, § 16.

66-497 Repealed. Laws 1994, LB 1160, § 127.

66-498 Tax previously paid; credit allowed; when.

If such tax has been paid upon any of the ingredients or compounds under the provisions of section 66-489, credit shall be allowed for such tax previously paid, in computing the tax upon such compound, so that the motor fuels used in the compound are not taxed twice.

Source: Laws 1925, c. 172, § 6, p. 451; C.S.1929, § 66-406; R.S.1943, § 66-415; R.S.1943, (1990), § 66-415; Laws 2004, LB 983, § 17.

66-499 Tax received; credit to Highway Trust Fund; credits and refunds; balance to Highway Cash Fund.

Unless otherwise provided, all sums of money received under sections 66-489 and 66-4,105 by the State Treasurer shall be credited to the Highway Trust Fund. Credits and refunds of the tax provided for in such sections allowed to producers, suppliers, distributors, wholesalers, exporters, importers, or retailers shall be paid from the Highway Trust Fund. The balance of the amount credited, after credits and refunds, shall be allocated to the Highway Cash Fund.

Source: Laws 1925, c. 172, § 12, p. 453; Laws 1929, c. 166, § 2, p. 574; C.S.1929, § 66-411; Laws 1933, c. 110, § 1, p. 446; Laws 1937, c. 148, § 4, p. 568; Laws 1939, c. 87, § 2, p. 359; Laws 1941, c. 133, § 2, p. 524; Laws 1941, c. 134, § 10, p. 535; C.S.Supp.,1941, § 66-411; Laws 1943, c. 138, § 1(1), p. 470; Laws 1943, c. 139, § 1(1), p. 477; R.S.1943, § 66-421; Laws 1947, c. 214, § 1, p. 696; Laws 1969, c. 530, § 1, p. 2170; Laws 1969, c. 584, § 62, p. 2384; Laws 1972, LB 1065, § 1; Laws 1972, LB 343, § 1; Laws 1986, LB 599, § 15; Laws 1989, LB 258, § 4; R.S.1943, (1990), § 66-421; Laws 1991, LB 627, § 25; Laws 2004, LB 983, § 18; Laws 2008, LB846, § 8.

66-4,100 Highway Cash Fund; Roads Operations Cash Fund; created; use; investment.

The Highway Cash Fund and the Roads Operations Cash Fund are hereby created. If bonds are issued pursuant to subsection (2) of section 39-2223, the balance of the share of the Highway Trust Fund allocated to the Department of Transportation and deposited into the Highway Restoration and Improvement Bond Fund as provided in subsection (6) of section 39-2215 and the balance of the money deposited in the Highway Restoration and Improvement Bond Fund as provided in section 39-2215.01 shall be transferred by the State Treasurer, on or before the last day of each month, to the Highway Cash Fund. If no bonds are issued pursuant to subsection (2) of section 39-2223, the share of the Highway Trust Fund allocated to the Department of Transportation shall be transferred by the State Treasurer on or before the last day of each month to the Highway Cash Fund.

The Legislature may direct the State Treasurer to transfer funds from the Highway Cash Fund to the Roads Operations Cash Fund. Both funds shall be expended by the department (1) for acquiring real estate, road materials, equipment, and supplies to be used in the construction, reconstruction, improvement, and maintenance of state highways, (2) for the construction, reconstruction, improvement, and maintenance of state highways, including grading, drainage, structures, surfacing, roadside development, landscaping, and other incidentals necessary for proper completion and protection of state highways as the department shall, after investigation, find and determine shall be for the best interests of the highway system of the state, either independent of or in conjunction with federal-aid money for highway purposes, (3) for the share of the department of the cost of maintenance of state aid bridges, (4) for planning studies in conjunction with federal highway funds for the purpose of analyzing traffic problems and financial conditions and problems relating to state, county, township, municipal, federal, and all other roads in the state and for incidental costs in connection with the federal-aid grade crossing program for roads not on state highways, (5) for tests and research by the department or proportionate costs of membership, tests, and research of highway organizations when participated in by the highway departments of other states, (6) for the payment of expenses and costs of the Board of Examiners for County Highway and City Street Superintendents as set forth in section 39-2310, (7) for support of the public transportation assistance program established under section 13-1209 and the intercity bus system assistance program established under section 13-1213, and (8) for purchasing from political or governmental subdivisions or public corporations, pursuant to section 39-1307, any federal-aid transportation funds available to such entities.

Any money in the Highway Cash Fund and the Roads Operations Cash Fund not needed for current operations of the department shall, as directed by the Director-State Engineer to the State Treasurer, be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act, subject to approval by the board of each investment. All income received as a result of such investment shall be placed in the Highway Cash Fund.

Transfers may be made from the Roads Operations Cash Fund to the General Fund at the direction of the Legislature through June 30, 2019. The State Treasurer shall transfer seven million five hundred thousand dollars from the Roads Operations Cash Fund to the General Fund on or before June 30, 2018, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services. The State Treasurer shall transfer seven million five hundred thousand dollars from the Roads Operations Cash Fund to the General Fund on or after July 1, 2018, but on or before June 30, 2019, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services.

Source: Laws 1937, c. 148, § 4, p. 570; Laws 1939, c. 84, § 2, p. 363; Laws 1941, c. 133, § 2, p. 525; Laws 1941, c. 134, § 10, p. 536; C.S.Supp.,1941, § 66-411; Laws 1943, c. 138, § 1(4), p. 472; Laws 1943, c. 139, § 1(4), p. 479; R.S.1943, § 66-424; Laws 1947, c. 214, § 4, p. 698; Laws 1953, c. 131, § 15, p. 410; Laws 1965, c. 393, § 1, p. 1257; Laws 1969, c. 530, § 3, p. 2171; Laws 1971, LB 21, § 1; Laws 1972, LB 1496, § 2; Laws 1986, LB 599, § 16; Laws 1988, LB 632, § 19; Laws 1990, LB 602, § 3; R.S.

1943, (1990), § 66-424; Laws 1994, LB 1066, § 51; Laws 1994, LB 1194, § 15; Laws 2004, LB 1144, § 4; Laws 2011, LB98, § 2; Laws 2017, LB331, § 32; Laws 2017, LB339, § 238.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

66-4,101 Highway Allocation Fund; share of counties and municipalities; how used.

Any county may by resolution of the county board, any city may by ordinance of the mayor and city council, and any village may by ordinance of the chairperson and board of trustees issue bonds for the construction of roads of the county and street and state highway or federal-aid routes of cities and villages and to pay the interest on and to retire any such bonds by pledging funds received from the Highway Allocation Fund. Any city of the primary class may by ordinance of the mayor and city council issue bonds for the construction of offstreet parking facilities of such city and to pay the interest on and to retire any such bonds by pledging funds received from the Highway Allocation Fund.

The issuance of bonds by any county, city, or village under the authority of this section shall not be subject to any charter or statutory limitations of indebtedness or be subject to any restrictions imposed upon or conditions precedent to the exercise of the powers of counties, cities, and villages to issue bonds or evidences of indebtedness which may be contained in such charters or other statutes. Any county, city, or village which has heretofore or may hereafter issue bonds under the authority of this section shall levy property taxes upon all the taxable property in such county, city, or village issuing such bonds at such rate or rates within any applicable charter, statutory, or constitutional limitations as will provide funds which, together with receipts from the Highway Allocation Fund pledged to the payment of such bonds and any other money made available and used for that purpose, will be sufficient to pay the principal of and interest on such bonds as they severally mature.

Source: Laws 1965, c. 392, § 2, p. 1254; Laws 1967, c. 401, § 2, p. 1259; Laws 1969, c. 530, § 2, p. 2170; Laws 1972, LB 866, § 4; R.S.1943, (1990), § 66-423.01; Laws 1992, LB 719A, § 157.

66-4,102 Highway Allocation Fund; street intersection, defined.

As used in sections 66-4,101 and 66-4,102, street intersection shall include geometric design elements extending beyond the intersection of two streets to include construction involving curvature for turning movements, turning roadways, deceleration and acceleration lanes, median lanes, median openings, design and construction for U-turns, sight distances, and channelization, together with necessary traffic controls, including such construction as is necessary for traffic both entering and leaving the actual street intersection.

Source: Laws 1965, c. 392, § 3, p. 1254; Laws 1972, LB 1065, § 2; R.S.1943, (1990), § 66-423.02.

66-4,103 Interstate commerce exemption.

The provisions of sections 66-482 to 66-4,103 shall not apply or be construed to apply to foreign or interstate commerce, except insofar as the same may be

permitted under the provisions of the Constitution and laws of the United States.

Source: Laws 1925, c. 172, § 10, p. 452; C.S.1929, § 66-409; R.S.1943, § 66-420; Laws 1987, LB 523, § 8; R.S.1943, (1990), § 66-420; Laws 2008, LB846, § 9.

Since tax imposed is upon use and distribution of gasoline, it is not a tax on interstate commerce. *State v. Smith*, 135 Neb. 423, 281 N.W. 851 (1938); *Burke v. Bass*, 123 Neb. 297, 242 N.W. 606 (1932).

66-4,104 Transferred to section 66-525.

66-4,105 Motor fuels; use; excise tax; amount; use, defined.

(1) There is hereby levied and imposed an excise tax in an amount set in subsection (2) of this section, increased by the amounts imposed or determined under sections 66-489.02, 66-4,140, 66-4,145, and 66-4,146, upon the use of all motor fuels used in this state and due the State of Nebraska under section 66-489. Users of motor fuels subject to taxation under this section shall be allowed the same exemptions, deductions, and rights of reimbursement as are authorized and permitted by Chapter 66, article 4, other than any commissions provided under such article.

(2) The excise tax shall be:

(a) Seven and one-half cents per gallon through December 31, 2015;

(b) Eight cents per gallon beginning on January 1, 2016, through December 31, 2016;

(c) Eight and one-half cents per gallon beginning on January 1, 2017, through December 31, 2017;

(d) Nine cents per gallon beginning on January 1, 2018, through December 31, 2018; and

(e) Nine and one-half cents per gallon beginning on January 1, 2019.

(3) For purposes of this section and section 66-4,106, use means the purchase or consumption of motor fuels in this state.

Source: Laws 1931, c. 130, § 1, p. 363; Laws 1935, c. 155, § 2, p. 573; Laws 1935, Spec. Sess., c. 16, § 2, p. 129; Laws 1937, c. 148, § 2, p. 567; Laws 1939, c. 84, § 3, p. 363; Laws 1941, c. 133, § 3, p. 526; C.S.Supp.,1941, § 66-416; Laws 1943, c. 138, § 3, p. 476; R.S.1943, § 66-428; Laws 1953, c. 225, § 3, p. 794; Laws 1955, c. 247, § 3, p. 781; Laws 1957, c. 282, § 3, p. 1029; Laws 1963, c. 379, § 1, p. 1218; Laws 1965, c. 391, § 3, p. 1251; Laws 1969, c. 529, § 2, p. 2168; Laws 1971, LB 776, § 3; Laws 1972, LB 1208, § 3; Laws 1973, LB 397, § 4; Laws 1977, LB 139, § 3; Laws 1977, LB 52, § 3; Laws 1979, LB 571, § 4; Laws 1980, LB 722, § 8; Laws 1981, LB 104, § 2; Laws 1981, LB 360, § 7; Laws 1984, LB 767, § 14; Laws 1985, LB 346, § 3; Laws 1988, LB 1039, § 5; Laws 1990, LB 1124, § 3; R.S.1943, (1990), § 66-428; Laws 1991, LB 627, § 27; Laws 1994, LB 1160, § 68; Laws 2004, LB 983, § 19; Laws 2008, LB846, § 10; Laws 2015, LB610, § 2.

The provisions of Laws 1979, LB 571, creating a one-cent gasoline tax for the development of alcohol plants and facilities, is severable and may stand alone even though the rest of LB 571 was held to be void. *State ex rel. Douglas v. Thone*, 204 Neb. 836, 286 N.W.2d 249 (1979).

Question of proper method of allocation and distribution of gas tax raised. *State ex rel. Heintze v. County of Adams*, 162 Neb. 127, 75 N.W.2d 539 (1956).

An excise tax on gasoline does not violate the commerce clause or the due process and equal protection clauses of the

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federal Constitution. *State v. Smith*, 135 Neb. 423, 281 N.W. 851 (1938).

Supreme Court refused to entertain suit under declaratory judgments act to declare act unconstitutional and tax paid thereunder a trust fund. *Arlington Oil Co. v. Hall*, 130 Neb. 674, 266 N.W. 583 (1936).

This section, prior to its amendment in 1937, was declared unconstitutional as a violation of section 1, Article II, and section 1, Article III, Constitution of Nebraska. *Smithberger v. Banning*, 130 Neb. 354, 265 N.W. 10 (1936); *Smithberger v. Banning*, 129 Neb. 651, 262 N.W. 492 (1935).

The tax imposed by this section attaches to the use of the fuel. *Standard Oil Co. v. Kurtz*, 330 F.2d 178 (8th Cir. 1964).

66-4,106 Excise tax; payment; report; duty to collect.

Every person using motor fuels subject to taxation on the use thereof under sections 66-4,105 and 66-4,114 shall pay the excise taxes and make a report concerning the same to the department in like manner, form, and time as is required by sections 66-488 and 66-489 for producers, suppliers, distributors, wholesalers, or importers of motor fuels. No such payment of tax or report shall be required if such tax has been paid and the report has been made for such user by any producer, supplier, distributor, wholesaler, or importer licensed under section 66-484. Producers, suppliers, distributors, wholesalers, or importers or other persons having paid such tax or liable for its payment shall collect the amount thereof from any person to whom such motor fuels are sold in this state along with the selling price thereof.

Source: Laws 1931, c. 130, § 2, p. 364; C.S.Supp.,1941, § 66-417; Laws 1943, c. 141, § 2, p. 485; R.S.1943, § 66-429; Laws 1963, c. 373, § 9, p. 1199; Laws 1988, LB 1039, § 6; R.S.1943, (1990), § 66-429; Laws 1991, LB 627, § 28; Laws 1994, LB 1160, § 69; Laws 2004, LB 983, § 20.

66-4,107 Transferred to section 66-526.

66-4,108 Transferred to section 66-527.

66-4,109 Transferred to section 66-528.

66-4,110 Transferred to section 66-529.

66-4,111 Transferred to section 66-530.

66-4,112 Transferred to section 66-531.

66-4,113 Transferred to section 66-719.01.

66-4,114 Motor fuels; importation; liable for tax; exception.

Motor fuels in the supply tank of any qualified motor vehicle as defined in section 66-1416 which is regularly connected with the carburetor of the engine of any such vehicle and which is brought into this state shall be liable for the payment of the tax imposed by this state upon motor fuels under sections 66-489, 66-489.02, and 66-4,105 except when a trip permit is used as provided in the International Fuel Tax Agreement Act.

Source: Laws 1935, c. 160, § 2, p. 584; C.S.Supp.,1941, § 66-426; R.S. 1943, § 66-441; Laws 1967, c. 403, § 1, p. 1262; Laws 1981, LB 360, § 8; R.S.1943, (1990), § 66-441; Laws 1991, LB 627, § 37; Laws 1992, LB 1013, § 5; Laws 1996, LB 1218, § 18; Laws 2000, LB 1067, § 7; Laws 2004, LB 983, § 21; Laws 2008, LB846, § 12.

Cross References

International Fuel Tax Agreement Act, see section 66-1401.

66-4,115 Repealed. Laws 2000, LB 1067, § 37.

66-4,116 Motor fuels; transportation; interstate commerce exempt.

The Legislature declares that it does not intend to place any burden upon the transportation of motor fuels in interstate commerce under such circumstances as the Constitution and statutes of the United States of America preclude, but deems the tax provided for in section 66-4,114 and the regulations as provided herein to be necessary to the effective collection of a tax on motor fuels used in motor vehicles upon the highways of this state.

Source: Laws 1935, c. 160, § 5, p. 585; C.S.Supp.,1941, § 66-429; R.S. 1943, § 66-444; R.S.1943, (1990), § 66-444; Laws 2004, LB 983, § 22.

66-4,117 Motor vehicle fuel tax law; enforcement; rules and regulations.

The department or any peace officer of this state shall enforce sections 66-4,114 to 66-4,117. The department shall adopt and promulgate reasonable rules and regulations intended to collect revenue arising under such sections and for the payment thereof.

Source: Laws 1935, c. 160, § 1, p. 583; C.S.Supp.,1941, § 66-425; R.S. 1943, § 66-440; R.S.1943, (1990), § 66-440; Laws 1991, LB 627, § 36.

66-4,118 Repealed. Laws 2004, LB 983, § 71.

66-4,119 Repealed. Laws 2004, LB 983, § 71.

66-4,120 Repealed. Laws 2004, LB 983, § 71.

66-4,121 Repealed. Laws 2004, LB 983, § 71.

66-4,122 Repealed. Laws 2001, LB 168, § 15.

66-4,123 Repealed. Laws 2001, LB 168, § 15.

66-4,124 Repealed. Laws 2004, LB 983, § 71.

66-4,124.01 Tax credit gasoline; certain purchases; repeal of section, effect.

The repeal of section 66-4,124 by Laws 2004, LB 983, applies to motor fuels purchased during any tax year ending or deemed to end on or after January 1, 2005, under the Internal Revenue Code.

Source: Laws 2004, LB 983, § 24.

66-4,125 Repealed. Laws 2004, LB 983, § 71.

66-4,126 Repealed. Laws 2004, LB 983, § 71.

66-4,127 Repealed. Laws 2004, LB 983, § 71.

66-4,128 Repealed. Laws 2004, LB 983, § 71.

66-4,129 Repealed. Laws 2004, LB 983, § 71.

66-4,130 Repealed. Laws 2004, LB 983, § 71.

66-4,131 Repealed. Laws 2004, LB 983, § 71.

66-4,132 Repealed. Laws 2004, LB 983, § 71.

66-4,133 Repealed. Laws 1993, LB 364, § 26.

66-4,134 Repealed. Laws 2004, LB 983, § 71.

66-4,135 Repealed. Laws 1993, LB 364, § 26.

66-4,136 Repealed. Laws 1993, LB 364, § 26.

66-4,137 Repealed. Laws 1993, LB 364, § 26.

66-4,138

Note: This section was transferred in 1991 from section 66-471. Laws 1985, LB 346, section 9 provided for a repeal of section 66-471 with an operative date of January 1, 1993.

66-4,139

Note: This section was transferred in 1991 from section 66-472. Laws 1985, LB 346, section 9 provided for a repeal of section 66-472 with an operative date of January 1, 1993.

66-4,140 Motor fuels; excise tax; disposition; payment.

(1) Each producer, supplier, distributor, wholesaler, or importer required by section 66-489 to pay motor fuels taxes shall, in addition to all other taxes provided by law, pay an excise tax at a rate set pursuant to section 66-4,144 for motor fuels received, imported, produced, refined, manufactured, blended, or compounded by such producer, supplier, distributor, wholesaler, or importer within the State of Nebraska as motor fuels suitable for retail sale. All sums of money received under this section shall be credited to the Highway Trust Fund. Credits and refunds of such tax allowed to producers, suppliers, distributors, wholesalers, or importers shall be paid from the Highway Trust Fund. The balance of the amount credited, after credits and refunds, shall be allocated to the Highway Restoration and Improvement Bond Fund if bonds are issued pursuant to subsection (2) of section 39-2223 and to the Highway Cash Fund if no bonds are issued pursuant to such subsection.

(2) Producers, suppliers, distributors, wholesalers, and importers of motor fuels subject to taxation under subsection (1) of this section shall pay such excise tax and shall make a report concerning the tax in like manner, form, and time and be allowed the same exemptions, deductions, and rights of reimbursement as are authorized producers, suppliers, distributors, wholesalers, or importers for taxes paid pursuant to Chapter 66, article 4.

Source: Laws 1980, LB 722, § 1; Laws 1986, LB 599, § 18; Laws 1988, LB 632, § 20; Laws 1988, LB 1039, § 7; Laws 1989, LB 258, § 6; Laws 1990, LB 602, § 4; R.S.1943, (1990), § 66-473; Laws 1991, LB 627, § 54; Laws 1994, LB 1160, § 73; Laws 2004, LB 983, § 23.

66-4,141 Excise tax; tax rate per gallon; computations.

(1) Upon receipt of the cost figures required by section 66-4,143, the department shall determine the statewide average cost by dividing the total amount

paid for motor fuels by the State of Nebraska, excluding any state and federal taxes, by the total number of gallons of motor fuels purchased during the reporting period.

(2) After computing the statewide average cost as required in subsection (1) of this section, the department shall multiply such statewide average cost by the tax rate established pursuant to section 66-4,144.

(3) In making the computations required by subsections (1) and (2) of this section, gallonage reported shall be rounded to the nearest gallon and total costs shall be rounded to the nearest dollar. All other computations shall be made with three decimal places, except that after all computations have been made the tax per gallon shall be rounded to the nearest one-tenth of one cent.

(4) The tax rate per gallon computed pursuant to this section shall be distributed to all licensed motor fuels producers, suppliers, distributors, wholesalers, importers, and compressed fuel retailers at least five days prior to the first day of any semiannual period during which the tax is to be adjusted. Such tax rate shall be utilized in computing the taxes due for the period specified by the department.

Source: Laws 1980, LB 722, § 3; Laws 1981, LB 172, § 3; Laws 1985, LB 112, § 1; Laws 1990, LB 1124, § 6; R.S.1943, (1990), § 66-474; Laws 1991, LB 627, § 55; Laws 1994, LB 1160, § 74; Laws 1995, LB 182, § 33; Laws 1998, LB 1161, § 16; Laws 2000, LB 1067, § 8; Laws 2004, LB 983, § 25.

66-4,142 Repealed. Laws 2004, LB 983, § 71.

66-4,143 Materiel administrator; submit report; contents.

(1) The materiel administrator of the Department of Administrative Services shall on or before the tenth day of the fifth calendar month following the end of a semiannual period submit to the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue a report providing the total cost and number of gallons of motor fuels purchased by the State of Nebraska during the preceding month. In providing such information, the materiel administrator shall total only those purchases which were fifty or more gallons and shall separately identify the amount of any state or federal tax which was included in the price paid.

(2) The department shall provide any assistance the materiel administrator may need in performing his or her duties under this section.

Source: Laws 1980, LB 722, § 10; Laws 1981, LB 172, § 4; R.S.1943, (1990), § 66-475; Laws 1991, LB 627, § 57; Laws 1994, LB 1160, § 76; Laws 1995, LB 182, § 35; Laws 1998, LB 1161, § 17; Laws 2004, LB 983, § 26.

66-4,144 Highway Restoration and Improvement Bond Fund; Highway Cash Fund; maintain adequate balance; setting of excise tax rates; procedure; Department of Transportation; provide information.

(1) In order to insure that an adequate balance in the Highway Restoration and Improvement Bond Fund is maintained to meet the debt service requirements of bonds to be issued by the commission under subsection (2) of section 39-2223, the Director-State Engineer shall certify to the department the excise tax rate to be imposed by sections 66-4,140 and 66-6,108 for each year during

which such bonds are outstanding necessary to provide in each such year money equal in amount to not less than one hundred twenty-five percent of such year's bond principal and interest payment requirements. The department shall adjust the rate as certified by the Director-State Engineer. Such rate shall be in addition to the rate of excise tax set pursuant to subsection (2) of this section. Each such rate shall be effective from July 1 of a stated year through June 30 of the succeeding year or during such other period not longer than one year as the Director-State Engineer certifies to be consistent with the principal and interest requirements of such bonds. Such excise tax rates set pursuant to this subsection may be increased, but such excise tax rates shall not be subject to reduction or elimination unless the Director-State Engineer has received from the State Highway Commission notice of reduced principal and interest requirements for such bonds, in which event the Director-State Engineer shall certify the new rate or rates to the department. The new rate or rates, if any, shall become effective on the first day of the following semiannual period.

(2) In order to insure that there is maintained an adequate Highway Cash Fund balance to meet expenditures from such fund as appropriated by the Legislature, by June 15 or five days after the adjournment of the regular legislative session each year, whichever is later, the Director-State Engineer shall certify to the department the excise tax rate to be imposed by sections 66-4,140 and 66-6,108. The department shall adjust the rate as certified by the Director-State Engineer to be effective from July 1 through June 30 of the succeeding year. The rate of excise tax for a given July 1 through June 30 period set pursuant to this subsection shall be in addition to and independent of the rate or rates of excise tax set pursuant to subsection (1) of this section for such period. The Director-State Engineer shall determine the cash and investment balances of the Highway Cash Fund at the beginning of each fiscal year under consideration and the estimated receipts to the Highway Cash Fund from each source which provides at least one million dollars annually to such fund. The rate of excise tax shall be an amount sufficient to meet the appropriations made from the Highway Cash Fund by the Legislature. Such rate shall be set in increments of one-tenth of one percent.

(3) The Department of Transportation shall provide to the Legislative Fiscal Analyst an electronic copy of the information that is submitted to the Department of Revenue and used to set or adjust the excise tax rate.

(4) If the actual receipts received to date added to any projections or modified projections of deposits to the Highway Cash Fund for the current fiscal year are less than ninety-nine percent or greater than one hundred two percent of the appropriation for the current fiscal year, the Director-State Engineer shall certify to the department the adjustment in rate necessary to meet the appropriations made from the Highway Cash Fund by the Legislature. The department shall adjust the rate as certified by the Director-State Engineer to be effective on the first day of the following semiannual period.

(5) Nothing in this section shall be construed to abrogate the duties of the Department of Transportation or attempt to change any highway improvement program schedule.

Source: Laws 1980, LB 722, § 5; Laws 1981, LB 172, § 5; Laws 1988, LB 632, § 21; R.S.1943, (1990), § 66-476; Laws 1991, LB 255, § 1; Laws 1994, LB 1160, § 77; Laws 1995, LB 182, § 36; Laws 1997,

LB 397, § 5; Laws 1998, LB 1161, § 18; Laws 2000, LB 1067, § 10; Laws 2000, LB 1135, § 11; Laws 2004, LB 983, § 27; Laws 2012, LB782, § 88; Laws 2017, LB339, § 239.

66-4,145 Additional excise tax.

(1) In addition to the tax imposed by sections 66-489, 66-489.02, and 66-4,140, each producer, supplier, distributor, wholesaler, and importer required by section 66-489 to pay motor fuels taxes shall pay an excise tax in an amount set in subsection (2) of this section on all motor fuels received, imported, produced, refined, manufactured, blended, or compounded by such producer, supplier, distributor, wholesaler, or importer within the State of Nebraska.

(2) The excise tax shall be:

(a) Two and eight-tenths cents per gallon through December 31, 2015;

(b) Three and eight-tenths cents per gallon beginning on January 1, 2016, through December 31, 2016;

(c) Four and eight-tenths cents per gallon beginning on January 1, 2017, through December 31, 2017;

(d) Five and eight-tenths cents per gallon beginning on January 1, 2018, through December 31, 2018; and

(e) Six and eight-tenths cents per gallon beginning on January 1, 2019.

Source: Laws 1980, LB 722, § 14; Laws 1985, LB 112, § 2; Laws 1988, LB 1039, § 8; R.S.1943, (1990), § 66-477; Laws 1991, LB 627, § 58; Laws 1994, LB 1160, § 78; Laws 2004, LB 983, § 28; Laws 2008, LB846, § 13; Laws 2015, LB610, § 3.

66-4,146 Fuels; use; additional excise tax.

(1) In addition to the tax imposed by sections 66-489, 66-489.02, 66-4,140, and 66-4,145, each producer, supplier, distributor, wholesaler, and importer required by section 66-489 to pay motor fuels taxes shall pay an excise tax in an amount set in subsection (2) of this section on all motor fuels used in the State of Nebraska.

(2) The tax shall be:

(a) Two and eight-tenths cents per gallon through December 31, 2015;

(b) Three and eight-tenths cents per gallon beginning on January 1, 2016, through December 31, 2016;

(c) Four and eight-tenths cents per gallon beginning on January 1, 2017, through December 31, 2017;

(d) Five and eight-tenths cents per gallon beginning on January 1, 2018, through December 31, 2018; and

(e) Six and eight-tenths cents per gallon beginning on January 1, 2019.

Source: Laws 1980, LB 722, § 15; Laws 1985, LB 112, § 3; Laws 1988, LB 1039, § 9; R.S.1943, (1990), § 66-478; Laws 1991, LB 627, § 59; Laws 1994, LB 1160, § 79; Laws 2004, LB 983, § 29; Laws 2008, LB846, § 14; Laws 2015, LB610, § 4.

66-4,146.01 Floor-stocks tax on agricultural ethyl alcohol; rate; payment.

(1) There is hereby imposed a floor-stocks tax on agricultural ethyl alcohol owned by any person on January 1, 2005, if:

(a) No tax was imposed on such fuel under section 66-489 as the section existed on December 31, 2004; and

(b) Tax would have been imposed on such fuel by section 66-489 as the section existed for periods prior to January 1, 2005.

(2) The rate of the tax imposed by this section shall be the amount of tax imposed under section 66-489 on December 31, 2004.

(3) Any person owning agricultural ethyl alcohol on January 1, 2005, to which the tax imposed by this section applies shall be liable for such tax. The tax imposed by this section shall be paid before July 1, 2005, and shall be paid in such manner as the department prescribes.

Source: Laws 2004, LB 983, § 30.

66-4,147 Receipts from excise tax; disposition.

The receipts from the tax established under sections 66-4,145, 66-4,146, and 66-6,109 shall be credited to the Highway Trust Fund. Credits and refunds of such tax allowed to producers, suppliers, distributors, wholesalers, exporters, importers, or retailers shall be paid from the Highway Trust Fund. The balance of the amount credited, after credits and refunds, shall be allocated to the Highway Allocation Fund.

Source: Laws 1980, LB 722, § 17; Laws 1986, LB 599, § 19; Laws 1989, LB 258, § 7; R.S.1943, (1990), § 66-479; Laws 1991, LB 627, § 60; Laws 1994, LB 1160, § 80; Laws 1995, LB 182, § 37; Laws 2000, LB 1067, § 11; Laws 2004, LB 983, § 31.

66-4,147.01 Taxes, interest, and penalties; disposition.

All taxes, interest, and penalties collected under Chapter 66, article 4, shall be remitted to the State Treasurer for credit to the Highway Trust Fund or Highway Cash Fund as appropriate.

Source: Laws 2000, LB 1067, § 6.

66-4,148 Highway Allocation Fund; distribution of funds.

(1) The State Treasurer shall monthly distribute the receipts accruing to the Highway Allocation Fund pursuant to section 66-4,147. One-half of such receipts shall be distributed to the various counties and municipal counties for road purposes and one-half of such receipts shall be distributed to the various municipalities and municipal counties for street purposes.

(2) The distribution of funds to the respective cities, counties, and municipal counties under subsection (1) of this section shall be based on the provisions of Chapter 39, article 25.

Source: Laws 1980, LB 722, § 18; Laws 1986, LB 599, § 20; R.S.1943, (1990), § 66-480; Laws 2001, LB 142, § 53.

66-4,149 Rules and regulations.

The department shall adopt and promulgate rules and regulations, prescribe forms, and perform all duties necessary to carry out its duties relating to the motor fuels tax.

Source: Laws 1980, LB 722, § 13; R.S.1943, (1990), § 66-481; Laws 1991, LB 627, § 61; Laws 2004, LB 983, § 32.

**ARTICLE 5
TRANSPORTATION OF FUELS**

Cross References

Motor carriers, regulations, see section 75-301 et seq.

Section	
66-501.	Sections, purpose; how construed.
66-502.	Liquid fuel carriers license; issuance.
66-502.01.	Motor vehicle equipped with cargo tank; restrictions.
66-503.	License; other documents; possession required; motor fuel delivery permit number required; when; inspections; enforcement.
66-504.	Repealed. Laws 1981, LB 360, § 13.
66-505.	Motor fuel transportation; vehicles; display required; rules and regulations.
66-506.	Repealed. Laws 1963, c. 373, § 21.
66-507.	Repealed. Laws 1963, c. 373, § 21.
66-508.	Repealed. Laws 1951, c. 209, § 1.
66-509.	Repealed. Laws 1963, c. 373, § 21.
66-510.	Repealed. Laws 1963, c. 373, § 21.
66-511.	Repealed. Laws 1980, LB 834, § 66.
66-512.	Unlawful acts; prohibited.
66-513.	Repealed. Laws 1963, c. 373, § 21.
66-514.	Repealed. Laws 1993, LB 440, § 19.
66-515.	Repealed. Laws 1993, LB 440, § 19.
66-516.	Repealed. Laws 1993, LB 440, § 19.
66-517.	Repealed. Laws 1993, LB 440, § 19.
66-518.	Repealed. Laws 1993, LB 440, § 19.
66-519.	Repealed. Laws 1993, LB 440, § 19.
66-520.	Repealed. Laws 1993, LB 440, § 19.
66-520.01.	Repealed. Laws 1991, LB 627, § 148.
66-521.	Repealed. Laws 1947, c. 215, § 1.
66-522.	Repealed. Laws 1991, LB 627, § 148.
66-523.	Repealed. Laws 1947, c. 215, § 1.
66-524.	Repealed. Laws 1991, LB 627, § 148.
66-525.	Carriers; transportation companies; shipments of motor fuel or diesel fuel into or out of state; reports; contents.
66-526.	Motor vehicle fuel or diesel fuel; unlawful transportation; vehicle declared nuisance.
66-527.	Unlawful transportation; search and seizure; arrest; administrative penalty; terms, defined.
66-528.	Unlawful transportation; conviction; effect.
66-529.	Unlawful transportation; conviction; sale of vehicle.
66-530.	Unlawful transportation; no arrest; sale of fuel and vehicle; procedure.
66-531.	Unlawful transportation; delay in proceedings; intervention by lienor or owner of vehicle.

66-501 Sections, purpose; how construed.

Sections 66-501 to 66-512 and 66-525 to 66-531 are for the purpose of aiding in the administration and enforcement of the motor fuel laws of this state. Such sections shall not be construed to apply to any person transporting motor

vehicle fuel or diesel fuel within the State of Nebraska if such fuel is for such person's own agricultural, quarrying, industrial, or other nonhighway use.

Source: Laws 1935, c. 130, § 1, p. 462; Laws 1937, c. 146, § 1, p. 558; C.S.Supp.,1941, § 66-801; R.S.1943, § 66-501; Laws 1991, LB 627, § 62; Laws 1993, LB 440, § 4; Laws 1994, LB 1160, § 81.

66-502 Liquid fuel carriers license; issuance.

The Department of Revenue shall issue a liquid fuel carriers license to the owner and lessee of every car, automobile, truck, trailer, vehicle, or other means of transportation using the highways for the transportation of motor vehicle fuel or diesel fuel into, within, or out of the State of Nebraska. Such licenses shall be issued by the department on receipt of applications from owners and lessees of such vehicles on forms provided by the department. If the applicant is an individual, the application shall include the applicant's social security number. Such licenses may be denied according to the provisions of section 66-729. The liquid fuel carriers license shall be valid until suspended, revoked for cause, or otherwise canceled and shall not be transferable.

Source: Laws 1935, c. 130, § 2, p. 462; C.S.Supp.,1941, § 66-802; R.S. 1943, § 66-502; Laws 1967, c. 397, § 14, p. 1253; Laws 1969, c. 526, § 1, p. 2147; Laws 1991, LB 627, § 63; Laws 1993, LB 440, § 5; Laws 1994, LB 1160, § 82; Laws 1997, LB 752, § 150; Laws 2004, LB 983, § 33.

66-502.01 Motor vehicle equipped with cargo tank; restrictions.

Any motor vehicle that is equipped with a cargo tank for the purpose of transporting motor vehicle fuel or diesel fuel shall be equipped with a suitable fuel supply tank and shall not have a fuel connection of any nature running from the cargo tank to the fuel supply tank or to the carburetor of such motor vehicle with which to draw fuel from the cargo tank.

Source: Laws 1994, LB 1160, § 83.

66-503 License; other documents; possession required; motor fuel delivery permit number required; when; inspections; enforcement.

(1) Every person in charge of any vehicle in which motor vehicle fuel or diesel fuel is carried into, within, or out of the State of Nebraska shall have and keep a copy of the liquid fuel carriers license with him or her during the entire transportation and also a copy of the bill of sale, bill of lading, manifest, purchase order, sales invoice or delivery ticket, or similar documentation covering all such motor vehicle fuel or diesel fuel which is individually numbered and dated and shows the kind and amount of the motor vehicle fuel or diesel fuel, where obtained and of whom, the destination state or delivery location, and the name and address of the owner and of the consignee or purchaser, if applicable. Such person shall exhibit every such paper or document, immediately upon demand, to the department, any employee thereof, or any peace officer of this state.

(2)(a) Any person importing motor vehicle fuel or diesel fuel into the State of Nebraska for the purpose of delivery in this state who does not have in his or her possession an original unaltered bill of sale, bill of lading, or manifest identifying Nebraska as the destination state shall obtain a motor fuel delivery permit number prior to delivering such fuel. A separate motor fuel delivery

permit number shall be required each time such person enters Nebraska for the purpose of delivering motor vehicle fuel or diesel fuel in Nebraska. Prior to issuance of a motor fuel delivery permit number, the person shall provide his or her Nebraska liquid fuel carriers license number, the type and amount of fuel being imported, where obtained, the destination, the original bill of sale, bill of lading, or manifest number, if applicable, and such other information as the Department of Revenue deems necessary.

(b) Any person obtaining motor vehicle fuel or diesel fuel from a bulk fuel storage facility located in this state, other than a pipeline terminal, barge line terminal, or refinery, who exits this state and returns with all or any portion of such fuel remaining shall not be deemed to be importing such remaining fuel and shall not be required to obtain a motor fuel delivery permit number if such person maintains the documents and papers required by subsection (1) of this section establishing that such remaining fuel was obtained from a bulk fuel storage facility located in this state.

(3) Any person transporting motor vehicle fuel or diesel fuel shall be deemed to have given his or her consent to submit to an inspection of licenses and permits required for the transportation of fuel and the documents and papers required by this section for the purpose of determining compliance with the motor fuel laws. The issuance of a motor fuel delivery permit number under this section shall be deemed to be the issuance of a permit for purposes of enforcing the motor fuel laws.

(4) Any law enforcement officer who has been duly authorized to make arrests for violations of traffic laws of this state or ordinances of any city or village or any carrier enforcement officer who has reasonable grounds to believe that a vehicle is transporting motor vehicle fuel or diesel fuel may require the operator of such vehicle to display any or all licenses and permits required for the transportation of fuel and the documents and papers required by this section. Such law enforcement officer or carrier enforcement officer may make a record of any of the information contained on the licenses or permits or any of the information from the bill of sale, bill of lading, manifest, or other documents and papers required by sections 66-501 to 66-512 and 66-525 to 66-531.

(5) The Legislature declares that it does not intend to place any burden upon the transportation of motor vehicle fuel or diesel fuel in interstate commerce under such circumstances as federal law and the Constitution of the United States preclude.

Source: Laws 1935, c. 130, § 3, p. 463; C.S.Supp.,1941, § 66-803; R.S. 1943, § 66-503; Laws 1955, c. 255, § 1, p. 797; Laws 1969, c. 526, § 2, p. 2148; Laws 1991, LB 11, § 1; Laws 1991, LB 627, § 64; Laws 1993, LB 440, § 6; Laws 1994, LB 1160, § 84; Laws 1999, LB 143, § 1.

66-504 Repealed. Laws 1981, LB 360, § 13.

66-505 Motor fuel transportation; vehicles; display required; rules and regulations.

Every vehicle used in transporting motor vehicle fuel or diesel fuel subject to sections 66-501 to 66-512 and 66-525 to 66-531 shall have the name and address of the owner of the vehicle displayed in the form and manner required

by 49 C.F.R. 390.21. The Department of Revenue shall adopt, promulgate, and enforce such rules and regulations as it deems proper and necessary for the proper administration and enforcement of such sections.

Source: Laws 1935, c. 130, § 4, p. 464; C.S.Supp.,1941, § 66-804; R.S. 1943, § 66-505; Laws 1991, LB 627, § 65; Laws 1993, LB 440, § 7; Laws 1994, LB 1160, § 85.

66-506 Repealed. Laws 1963, c. 373, § 21.

66-507 Repealed. Laws 1963, c. 373, § 21.

66-508 Repealed. Laws 1951, c. 209, § 1.

66-509 Repealed. Laws 1963, c. 373, § 21.

66-510 Repealed. Laws 1963, c. 373, § 21.

66-511 Repealed. Laws 1980, LB 834, § 66.

66-512 Unlawful acts; prohibited.

It shall be unlawful for any person (1) to transport any motor vehicle fuel or diesel fuel within, into, or across this state in violation of any of the provisions of sections 66-501 to 66-512 and 66-525 to 66-531, (2) to fail to comply with any of the provisions of such sections or of the rules, regulations, or requirements of the Department of Revenue to which he or she is subject, (3) to falsify any bill of sale, bill of lading, manifest, invoice, purchase order, or report, (4) to make, exhibit, or deliver to the department any false bill of sale, bill of lading, manifest, invoice, purchase order, or report, (5) to make, carry, or display any false document or paper referred to in this section, (6) to unlawfully evade, assist, or abet any other person in unlawfully evading any motor vehicle fuel or diesel fuel taxes imposed by the state, or (7) to deliver motor vehicle fuel or diesel fuel to a destination state not on an original unaltered bill of sale, bill of lading, or manifest carried by such person except when a motor fuel delivery permit number has been obtained or as otherwise provided in section 66-503.

Source: Laws 1935, c. 130, § 8, p. 466; Laws 1937, c. 146, § 14, p. 563; C.S.Supp.,1941, § 66-808; R.S.1943, § 66-512; Laws 1955, c. 256, § 1, p. 799; Laws 1963, c. 373, § 12, p. 1200; Laws 1991, LB 627, § 66; Laws 1993, LB 440, § 8; Laws 1994, LB 1160, § 86.

66-513 Repealed. Laws 1963, c. 373, § 21.

66-514 Repealed. Laws 1993, LB 440, § 19.

66-515 Repealed. Laws 1993, LB 440, § 19.

66-516 Repealed. Laws 1993, LB 440, § 19.

66-517 Repealed. Laws 1993, LB 440, § 19.

66-518 Repealed. Laws 1993, LB 440, § 19.

66-519 Repealed. Laws 1993, LB 440, § 19.

66-520 Repealed. Laws 1993, LB 440, § 19.

66-520.01 Repealed. Laws 1991, LB 627, § 148.

66-521 Repealed. Laws 1947, c. 215, § 1.

66-522 Repealed. Laws 1991, LB 627, § 148.

66-523 Repealed. Laws 1947, c. 215, § 1.

66-524 Repealed. Laws 1991, LB 627, § 148.

66-525 Carriers; transportation companies; shipments of motor fuel or diesel fuel into or out of state; reports; contents.

The department may require every railroad or railroad company, motor truck or motor truck transportation company, water transportation company, pipeline company, and other person transporting or bringing into the State of Nebraska or transporting from a refinery, ethanol or biodiesel facility, pipeline, pipeline terminal, or barge terminal within the State of Nebraska for the purpose of delivery within or export from this state any motor vehicle fuel or diesel fuel which is or may be produced and compounded for the purpose of operating or propelling any motor vehicle, to furnish a return on forms prescribed by the department to be delivered and on file in the office of the department by the twentieth day of each calendar month, showing all quantities of such motor vehicle fuel or diesel fuel transported during the preceding calendar month for which the report is made, giving the name of the consignee, the point at which delivery was made, the date of delivery, the method of delivery, the quantity of each such shipment, and such other information as the department requires.

Source: Laws 1957, c. 284, § 1, p. 1032; Laws 1963, c. 376, § 5, p. 1211; Laws 1967, c. 397, § 9, p. 1251; R.S.1943, (1990), § 66-426.01; Laws 1991, LB 627, § 26; R.S.Supp.,1992, § 66-4,104; Laws 1994, LB 1160, § 87; Laws 2000, LB 1067, § 12; Laws 2004, LB 983, § 34; Laws 2012, LB727, § 19.

66-526 Motor vehicle fuel or diesel fuel; unlawful transportation; vehicle declared nuisance.

Any car, automobile, truck, pipeline, airplane, vehicle, or means of transportation which is engaged in or used for the unlawful transportation of motor vehicle fuel or diesel fuel is declared a common nuisance, and there shall be no property rights of any kind whatsoever in any car, automobile, truck, pipeline, airplane, vehicle, or other means of transportation which is engaged in or used for the unlawful transportation of motor vehicle fuel or diesel fuel except as provided in sections 66-527 to 66-531.

Source: Laws 1933, c. 47, § 2, p. 258; C.S.Supp.,1941, § 66-423; R.S. 1943, § 66-433; R.S.1943, (1990), § 66-433; Laws 1991, LB 627, § 29; R.S.Supp.,1992, § 66-4,107; Laws 1994, LB 1160, § 88.

66-527 Unlawful transportation; search and seizure; arrest; administrative penalty; terms, defined.

(1) Any peace officer or agent of the department, having probable cause to believe that a vehicle is being used for the unlawful transportation of motor vehicle fuel or diesel fuel, shall make a search thereof with or without a warrant, and in every case when a search is made with or without a warrant

and it appears that any provision of sections 66-501 to 66-512 and 66-526 to 66-531 has been violated, the peace officer or agent shall take such fuel being unlawfully transported, the vehicle, and the person in charge thereof into custody, a complaint shall be filed within thirty days of the seizure against such party, fuel, and vehicle, a warrant shall issue, and such party, fuel, and vehicle shall be held for trial as in a criminal action. The vehicle and the fuel so seized shall not be taken from the possession of any officer or agent seizing and holding them by writ of replevin or other proceedings.

(2) In addition, any person who violates any provision of sections 66-501 to 66-512 and 66-526 to 66-531 is subject to an administrative penalty of one thousand dollars for each violation to be assessed and collected by the department. All such penalties under this subsection shall be assessed against the owner of the vehicle as of the date of the violation. All such penalties collected shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

(3) For purposes of this section:

(a) Owner means registered owner, titleholder, lessee entitled to possession of the motor vehicle, or anyone otherwise maintaining a possessory interest in the motor vehicle, but does not include anyone who, without participating in the use or operation of the motor vehicle and otherwise not engaged in the purpose for which the motor vehicle is being used, holds indicia of ownership primarily to protect his or her security interest in the motor vehicle or who acquired ownership of the motor vehicle pursuant to a foreclosure of a security interest in the motor vehicle; and

(b) Use means to operate, fuel, or otherwise employ.

Source: Laws 1933, c. 47, § 2, p. 258; C.S.Supp.,1941, § 66-423; R.S. 1943, § 66-434; Laws 1983, LB 302, § 4; R.S.1943, (1990), § 66-434; Laws 1991, LB 627, § 30; R.S.Supp.,1992, § 66-4,108; Laws 1994, LB 1160, § 89; Laws 2000, LB 1067, § 13.

66-528 Unlawful transportation; conviction; effect.

Final judgment of conviction in a criminal action brought under section 66-527 shall be in all cases a bar to any suits for the recovery of the fuel transported thereby or other personal property actually and directly used in connection therewith, or the value of the same, or for damages alleged to arise by reason of the seizing of such vehicle and the fuel contained therein, and upon conviction judgment shall be entered directing that the fuel transported and other personal property actually and directly used in connection with such violation may be put to official use by the confiscating agency for a period of not more than two years or shall be ordered sold by the court at public sale on ten days' notice, and the remaining proceeds, after the motor vehicle fuel or diesel fuel tax and cost of collection have been remitted to the appropriate fund or person, shall be remitted into the temporary school fund to be used for the support of the common schools as in the case of fines and forfeitures. The purchaser of such fuel or property shall take title thereto free and clear of all rights, title, and interest of all persons claiming to be owners thereof or claiming to have liens thereon.

Source: Laws 1933, c. 47, § 2, p. 259; C.S.Supp.,1941, § 66-423; R.S. 1943, § 66-435; R.S.1943, (1990), § 66-435; Laws 1991, LB 627, § 31; R.S.Supp.,1992, § 66-4,109; Laws 1994, LB 1160, § 90; Laws 1997, LB 345, § 2.

66-529 Unlawful transportation; conviction; sale of vehicle.

The court, upon conviction of the person so arrested, unless good cause to the contrary is shown by the owner or lienor, shall order a sale by public auction of the vehicle seized or the vehicle may be put to official use by the confiscating agency for a period of not more than two years. The officer making the sale, after deducting the expenses of keeping the vehicle, the fee for the seizure, and the cost of sale, shall pay all liens, according to their priorities, which are established, by intervention or otherwise at such hearing or in other proceedings brought for such purpose, as being bona fide and having been created without the lienor having any notice that the carrying vehicle was being used or was to be used for illegal transportation of motor vehicle fuel or diesel fuel and shall pay the balance of the proceeds into the temporary school fund to be used for the support of the common schools as in the case of fines and forfeitures. Notice of the hearing upon the proceedings for the forfeiture and confiscation of such vehicle shall be given all interested parties by publication in one issue of a legal newspaper published in the county or, if such newspaper is not published in the county, in a legal newspaper of general circulation in the county at least ten days prior to the date of hearing.

Source: Laws 1933, c. 47, § 2, p. 259; C.S.Supp.,1941, § 66-423; R.S. 1943, § 66-436; Laws 1986, LB 960, § 36; R.S.1943, (1990), § 66-436; Laws 1991, LB 627, § 32; R.S.Supp.,1992, § 66-4,110; Laws 1994, LB 1160, § 91; Laws 1997, LB 345, § 3.

66-530 Unlawful transportation; no arrest; sale of fuel and vehicle; procedure.

If the person operating the vehicle used for the unlawful transportation of motor vehicle fuel or diesel fuel is not apprehended or arrested, the officer or agent shall take the vehicle and fuel into custody, a complaint shall be filed charging that the vehicle was so unlawfully used, and the court shall fix a time for hearing upon the complaint. Notice of the hearing shall be given to all persons interested by publication at least ten days before the hearing in a legal newspaper published in such county or, if none is published in the county, in a legal newspaper of general circulation in the county. If the court finds at such hearing that such vehicle was used for the unlawful transportation of motor vehicle fuel or diesel fuel, judgment shall be entered directing that the fuel conveyed and any other personal property actually and directly used in connection with such violation shall be ordered sold by the court at a public sale on ten days' notice. The remaining proceeds, after the state motor vehicle fuel or diesel fuel tax and cost of collection have been remitted to the appropriate fund or person, shall be paid into the temporary school fund to be used for the support of the common schools as in the case of fines and forfeitures, and like proceedings shall be had against the vehicle as provided in section 66-529 where the person in charge is arrested and convicted.

Source: Laws 1933, c. 47, § 2, p. 260; C.S.Supp.,1941, § 66-423; R.S. 1943, § 66-437; Laws 1986, LB 960, § 37; R.S.1943, (1990), § 66-437; Laws 1991, LB 627, § 33; R.S.Supp.,1992, § 66-4,111; Laws 1994, LB 1160, § 92; Laws 1997, LB 345, § 4.

66-531 Unlawful transportation; delay in proceedings; intervention by lienor or owner of vehicle.

When it appears that any undue delay will result in the disposition of the criminal proceedings against the person or persons arrested, the owner or lienor of any vehicle seized as provided in sections 66-527 to 66-530 may be proceeded against in the manner prescribed in section 66-530. The court shall not allow the claim or lien of any person or persons who, prior to the time the vehicle was seized, knew, should have known, or had good cause to believe that the vehicle was being used or would be or was likely to be used for the unlawful transportation of motor vehicle fuel or diesel fuel. In all cases the burden of proof shall be on such claimants to show that they did not know, should not have known, and did not have good cause to believe that such vehicle was being used or would be or was likely to be used for the unlawful transportation of motor vehicle fuel or diesel fuel.

Source: Laws 1933, c. 47, § 2, p. 260; C.S.Supp.,1941, § 66-423; R.S. 1943, § 66-438; R.S.1943, (1990), § 66-438; Laws 1991, LB 627, § 34; R.S.Supp.,1992, § 66-4,112; Laws 1994, LB 1160, § 93.

ARTICLE 6

DIESEL, ALTERNATIVE, AND COMPRESSED FUEL TAXES

Cross References

Motor vehicle fuel tax, see section 66-482 et seq.

(a) SPECIAL FUEL TAX

Section	
66-601.	Repealed. Laws 1994, LB 1160, § 127.
66-601.01.	Repealed. Laws 1994, LB 1160, § 127.
66-602.	Repealed. Laws 1994, LB 1160, § 127.
66-603.	Repealed. Laws 1991, LB 627, § 148.
66-604.	Repealed. Laws 1969, c. 530, § 9.
66-605.	Repealed. Laws 1994, LB 1160, § 127.
66-605.01.	Repealed. Laws 1994, LB 1160, § 127.
66-605.02.	Repealed. Laws 1994, LB 1160, § 127.
66-605.03.	Repealed. Laws 1994, LB 1160, § 127.
66-605.04.	Repealed. Laws 1994, LB 1160, § 127.
66-605.05.	Repealed. Laws 1994, LB 1160, § 127.
66-605.06.	Repealed. Laws 1994, LB 1160, § 127.
66-605.07.	Repealed. Laws 1994, LB 1160, § 127.
66-606.	Repealed. Laws 1991, LB 627, § 148.
66-606.01.	Repealed. Laws 1994, LB 1160, § 127.
66-607.	Repealed. Laws 1994, LB 1160, § 127.
66-608.	Repealed. Laws 1994, LB 1160, § 127.
66-609.	Repealed. Laws 1994, LB 1160, § 127.
66-610.	Repealed. Laws 1973, LB 528, § 20.
66-610.01.	Transferred to section 66-733.
66-610.02.	Transferred to section 66-734.
66-610.03.	Transferred to section 66-735.
66-610.04.	Transferred to section 66-736.
66-610.05.	Repealed. Laws 1991, LB 627, § 148.
66-610.06.	Transferred to section 66-737.
66-611.	Repealed. Laws 1991, LB 627, § 148.
66-612.	Repealed. Laws 1994, LB 1160, § 127.
66-613.	Repealed. Laws 1994, LB 1160, § 127.
66-614.	Repealed. Laws 1991, LB 627, § 148.
66-615.	Repealed. Laws 1991, LB 627, § 148.
66-616.	Repealed. Laws 1994, LB 1160, § 127.
66-617.	Repealed. Laws 1994, LB 1160, § 127.
66-618.	Repealed. Laws 1994, LB 1160, § 127.
66-619.	Repealed. Laws 1994, LB 1160, § 127.

DIESEL, ALTERNATIVE, AND COMPRESSED FUEL TAXES

Section	
66-620.	Repealed. Laws 1994, LB 1160, § 127.
66-621.	Repealed. Laws 1991, LB 627, § 148.
66-622.	Repealed. Laws 1967, c. 406, § 2.
66-623.	Repealed. Laws 1991, LB 627, § 148.
66-624.	Repealed. Laws 1991, LB 627, § 148.
66-625.	Repealed. Laws 1991, LB 627, § 148.
66-626.	Repealed. Laws 1991, LB 627, § 148.
66-627.	Repealed. Laws 1991, LB 627, § 148.
66-628.	Repealed. Laws 1986, LB 1027, § 226.
66-628.01.	Repealed. Laws 1986, LB 1027, § 226.
66-629.	Repealed. Laws 1994, LB 1160, § 127.
66-630.	Repealed. Laws 1991, LB 627, § 148.
66-631.	Repealed. Laws 1991, LB 627, § 148.
66-632.	Repealed. Laws 1994, LB 1160, § 127.
66-633.	Repealed. Laws 1994, LB 1160, § 127.
66-634.	Repealed. Laws 1981, LB 360, § 13.
66-634.01.	Repealed. Laws 1994, LB 1160, § 127.
66-635.	Repealed. Laws 1994, LB 1160, § 127.
66-636.	Repealed. Laws 1991, LB 627, § 148.
66-637.	Repealed. Laws 1991, LB 627, § 148.
66-637.01.	Repealed. Laws 1991, LB 627, § 148.
66-638.	Repealed. Laws 1994, LB 1160, § 127.
66-639.	Transferred to section 66-601.01.
66-640.	Repealed. Laws 1967, c. 402, § 1.
66-641.	Repealed. Laws 1994, LB 1160, § 127.
66-642.	Repealed. Laws 1994, LB 1160, § 127.
66-643.	Repealed. Laws 1994, LB 1160, § 127.
66-644.	Repealed. Laws 1994, LB 1160, § 127.
66-645.	Repealed. Laws 1994, LB 1160, § 127.
66-646.	Repealed. Laws 1991, LB 627, § 148.
66-646.01.	Repealed. Laws 1994, LB 1160, § 127.
66-646.02.	Repealed. Laws 1992, LB 1013, § 21.
66-647.	Repealed. Laws 1994, LB 1160, § 127.
66-648.	Repealed. Laws 1994, LB 1160, § 127.
66-649.	Repealed. Laws 1991, LB 627, § 148.

(b) DIESEL FUEL TAX

66-650.	Repealed. Laws 2004, LB 983, § 71.
66-651.	Repealed. Laws 2004, LB 983, § 71.
66-652.	Repealed. Laws 2004, LB 983, § 71.
66-653.	Repealed. Laws 2004, LB 983, § 71.
66-654.	Repealed. Laws 2004, LB 983, § 71.
66-655.	Repealed. Laws 2004, LB 983, § 71.
66-656.	Repealed. Laws 2004, LB 983, § 71.
66-657.	Repealed. Laws 2004, LB 983, § 71.
66-658.	Repealed. Laws 2004, LB 983, § 71.
66-659.	Repealed. Laws 2004, LB 983, § 71.
66-660.	Repealed. Laws 2004, LB 983, § 71.
66-661.	Repealed. Laws 2004, LB 983, § 71.
66-662.	Repealed. Laws 2004, LB 983, § 71.
66-663.	Repealed. Laws 2004, LB 983, § 71.
66-664.	Repealed. Laws 2004, LB 983, § 71.
66-665.	Repealed. Laws 2004, LB 983, § 71.
66-666.	Repealed. Laws 2004, LB 983, § 71.
66-667.	Repealed. Laws 2004, LB 983, § 71.
66-668.	Repealed. Laws 2004, LB 983, § 71.
66-669.	Repealed. Laws 2004, LB 983, § 71.
66-670.	Repealed. Laws 2004, LB 983, § 71.
66-671.	Repealed. Laws 2004, LB 983, § 71.
66-672.	Repealed. Laws 2004, LB 983, § 71.
66-673.	Repealed. Laws 2004, LB 983, § 71.

§ 66-601

OILS, FUELS, AND ENERGY

Section

- 66-674. Repealed. Laws 2004, LB 983, § 71.
- 66-675. Repealed. Laws 2004, LB 983, § 71.
- 66-676. Repealed. Laws 2004, LB 983, § 71.
- 66-677. Repealed. Laws 2004, LB 983, § 71.
- 66-678. Repealed. Laws 2004, LB 983, § 71.
- 66-679. Repealed. Laws 2004, LB 983, § 71.
- 66-680. Repealed. Laws 2004, LB 983, § 71.
- 66-681. Repealed. Laws 2004, LB 983, § 71.
- 66-682. Repealed. Laws 2004, LB 983, § 71.
- 66-683. Repealed. Laws 2004, LB 983, § 71.

(c) ALTERNATIVE FUEL TAX

- 66-684. Repealed. Laws 2011, LB 289, § 41.
- 66-685. Repealed. Laws 2011, LB 289, § 41.
- 66-686. Repealed. Laws 2011, LB 289, § 41.
- 66-687. Repealed. Laws 2011, LB 289, § 41.
- 66-688. Repealed. Laws 2011, LB 289, § 41.
- 66-689. Repealed. Laws 1995, LB 182, § 72.
- 66-690. Repealed. Laws 1995, LB 182, § 72.
- 66-691. Repealed. Laws 2011, LB 289, § 41.
- 66-691.01. Repealed. Laws 2000, LB 1067, § 37.
- 66-692. Repealed. Laws 1995, LB 182, § 72.
- 66-693. Repealed. Laws 1995, LB 182, § 72.
- 66-694. Repealed. Laws 2011, LB 289, § 41.
- 66-695. Repealed. Laws 2011, LB 289, § 41.
- 66-696. Repealed. Laws 2000, LB 1067, § 37.

(d) COMPRESSED FUEL TAX

- 66-697. Act, how cited.
- 66-698. Purpose of act.
- 66-699. Definitions, where found.
- 66-6,100. Compressed fuel, defined.
- 66-6,101. Department, defined.
- 66-6,102. Gallon equivalent, defined.
- 66-6,103. Motor vehicle, defined.
- 66-6,104. Person, defined.
- 66-6,105. Retailer, defined.
- 66-6,106. Retailer's license; application; issuance; security requirements.
- 66-6,107. Excise tax; amount.
- 66-6,108. Excise tax; amount; credits and refunds; allocation.
- 66-6,109. Excise tax; amount.
- 66-6,109.01. Fuel used for buses; exemption from tax; when; equalization fee; section, how construed; refund.
- 66-6,109.02. Retailer; tax on average wholesale price of gasoline; credit to Highway Trust Fund; use; allocation.
- 66-6,110. Retailer; return; filing requirements.
- 66-6,111. Tax computation.
- 66-6,112. Taxes, interest, and penalties; disposition.
- 66-6,113. Compressed fuel tax; collection; commission.
- 66-6,114. Retailer; records.
- 66-6,115. Prohibited acts; violation; penalty; transport and delivery vehicles.
- 66-6,116. Enforcement; rules and regulations.

(a) SPECIAL FUEL TAX

66-601 Repealed. Laws 1994, LB 1160, § 127.

66-601.01 Repealed. Laws 1994, LB 1160, § 127.

66-602 Repealed. Laws 1994, LB 1160, § 127.

- 66-603 Repealed. Laws 1991, LB 627, § 148.
- 66-604 Repealed. Laws 1969, c. 530, § 9.
- 66-605 Repealed. Laws 1994, LB 1160, § 127.
- 66-605.01 Repealed. Laws 1994, LB 1160, § 127.
- 66-605.02 Repealed. Laws 1994, LB 1160, § 127.
- 66-605.03 Repealed. Laws 1994, LB 1160, § 127.
- 66-605.04 Repealed. Laws 1994, LB 1160, § 127.
- 66-605.05 Repealed. Laws 1994, LB 1160, § 127.
- 66-605.06 Repealed. Laws 1994, LB 1160, § 127.
- 66-605.07 Repealed. Laws 1994, LB 1160, § 127.
- 66-606 Repealed. Laws 1991, LB 627, § 148.
- 66-606.01 Repealed. Laws 1994, LB 1160, § 127.
- 66-607 Repealed. Laws 1994, LB 1160, § 127.
- 66-608 Repealed. Laws 1994, LB 1160, § 127.
- 66-609 Repealed. Laws 1994, LB 1160, § 127.
- 66-610 Repealed. Laws 1973, LB 528, § 20.
- 66-610.01 Transferred to section 66-733.
- 66-610.02 Transferred to section 66-734.
- 66-610.03 Transferred to section 66-735.
- 66-610.04 Transferred to section 66-736.
- 66-610.05 Repealed. Laws 1991, LB 627, § 148.
- 66-610.06 Transferred to section 66-737.
- 66-611 Repealed. Laws 1991, LB 627, § 148.
- 66-612 Repealed. Laws 1994, LB 1160, § 127.
- 66-613 Repealed. Laws 1994, LB 1160, § 127.
- 66-614 Repealed. Laws 1991, LB 627, § 148.
- 66-615 Repealed. Laws 1991, LB 627, § 148.
- 66-616 Repealed. Laws 1994, LB 1160, § 127.
- 66-617 Repealed. Laws 1994, LB 1160, § 127.
- 66-618 Repealed. Laws 1994, LB 1160, § 127.
- 66-619 Repealed. Laws 1994, LB 1160, § 127.

- 66-620 Repealed. Laws 1994, LB 1160, § 127.
- 66-621 Repealed. Laws 1991, LB 627, § 148.
- 66-622 Repealed. Laws 1967, c. 406, § 2.
- 66-623 Repealed. Laws 1991, LB 627, § 148.
- 66-624 Repealed. Laws 1991, LB 627, § 148.
- 66-625 Repealed. Laws 1991, LB 627, § 148.
- 66-626 Repealed. Laws 1991, LB 627, § 148.
- 66-627 Repealed. Laws 1991, LB 627, § 148.
- 66-628 Repealed. Laws 1986, LB 1027, § 226.
- 66-628.01 Repealed. Laws 1986, LB 1027, § 226.
- 66-629 Repealed. Laws 1994, LB 1160, § 127.
- 66-630 Repealed. Laws 1991, LB 627, § 148.
- 66-631 Repealed. Laws 1991, LB 627, § 148.
- 66-632 Repealed. Laws 1994, LB 1160, § 127.
- 66-633 Repealed. Laws 1994, LB 1160, § 127.
- 66-634 Repealed. Laws 1981, LB 360, § 13.
- 66-634.01 Repealed. Laws 1994, LB 1160, § 127.
- 66-635 Repealed. Laws 1994, LB 1160, § 127.
- 66-636 Repealed. Laws 1991, LB 627, § 148.
- 66-637 Repealed. Laws 1991, LB 627, § 148.
- 66-637.01 Repealed. Laws 1991, LB 627, § 148.
- 66-638 Repealed. Laws 1994, LB 1160, § 127.
- 66-639 Transferred to section 66-601.01.
- 66-640 Repealed. Laws 1967, c. 402, § 1.
- 66-641 Repealed. Laws 1994, LB 1160, § 127.
- 66-642 Repealed. Laws 1994, LB 1160, § 127.
- 66-643 Repealed. Laws 1994, LB 1160, § 127.
- 66-644 Repealed. Laws 1994, LB 1160, § 127.
- 66-645 Repealed. Laws 1994, LB 1160, § 127.
- 66-646 Repealed. Laws 1991, LB 627, § 148.
- 66-646.01 Repealed. Laws 1994, LB 1160, § 127.

66-646.02 Repealed. Laws 1992, LB 1013, § 21.

66-647 Repealed. Laws 1994, LB 1160, § 127.

66-648 Repealed. Laws 1994, LB 1160, § 127.

66-649 Repealed. Laws 1991, LB 627, § 148.

(b) DIESEL FUEL TAX

66-650 Repealed. Laws 2004, LB 983, § 71.

66-651 Repealed. Laws 2004, LB 983, § 71.

66-652 Repealed. Laws 2004, LB 983, § 71.

66-653 Repealed. Laws 2004, LB 983, § 71.

66-654 Repealed. Laws 2004, LB 983, § 71.

66-655 Repealed. Laws 2004, LB 983, § 71.

66-656 Repealed. Laws 2004, LB 983, § 71.

66-657 Repealed. Laws 2004, LB 983, § 71.

66-658 Repealed. Laws 2004, LB 983, § 71.

66-659 Repealed. Laws 2004, LB 983, § 71.

66-660 Repealed. Laws 2004, LB 983, § 71.

66-661 Repealed. Laws 2004, LB 983, § 71.

66-662 Repealed. Laws 2004, LB 983, § 71.

66-663 Repealed. Laws 2004, LB 983, § 71.

66-664 Repealed. Laws 2004, LB 983, § 71.

66-665 Repealed. Laws 2004, LB 983, § 71.

66-666 Repealed. Laws 2004, LB 983, § 71.

66-667 Repealed. Laws 2004, LB 983, § 71.

66-668 Repealed. Laws 2004, LB 983, § 71.

66-669 Repealed. Laws 2004, LB 983, § 71.

66-670 Repealed. Laws 2004, LB 983, § 71.

66-671 Repealed. Laws 2004, LB 983, § 71.

66-672 Repealed. Laws 2004, LB 983, § 71.

66-673 Repealed. Laws 2004, LB 983, § 71.

66-674 Repealed. Laws 2004, LB 983, § 71.

66-675 Repealed. Laws 2004, LB 983, § 71.

66-676 Repealed. Laws 2004, LB 983, § 71.

66-677 Repealed. Laws 2004, LB 983, § 71.

66-678 Repealed. Laws 2004, LB 983, § 71.

66-679 Repealed. Laws 2004, LB 983, § 71.

66-680 Repealed. Laws 2004, LB 983, § 71.

66-681 Repealed. Laws 2004, LB 983, § 71.

66-682 Repealed. Laws 2004, LB 983, § 71.

66-683 Repealed. Laws 2004, LB 983, § 71.

(c) ALTERNATIVE FUEL TAX

66-684 Repealed. Laws 2011, LB 289, § 41.

66-685 Repealed. Laws 2011, LB 289, § 41.

66-686 Repealed. Laws 2011, LB 289, § 41.

66-687 Repealed. Laws 2011, LB 289, § 41.

66-688 Repealed. Laws 2011, LB 289, § 41.

66-689 Repealed. Laws 1995, LB 182, § 72.

66-690 Repealed. Laws 1995, LB 182, § 72.

66-691 Repealed. Laws 2011, LB 289, § 41.

66-691.01 Repealed. Laws 2000, LB 1067, § 37.

66-692 Repealed. Laws 1995, LB 182, § 72.

66-693 Repealed. Laws 1995, LB 182, § 72.

66-694 Repealed. Laws 2011, LB 289, § 41.

66-695 Repealed. Laws 2011, LB 289, § 41.

66-696 Repealed. Laws 2000, LB 1067, § 37.

(d) COMPRESSED FUEL TAX

66-697 Act, how cited.

Sections 66-697 to 66-6,116 shall be known and may be cited as the Compressed Fuel Tax Act.

Source: Laws 1995, LB 182, § 1; Laws 1996, LB 1121, § 4; Laws 2008, LB846, § 15.

66-698 Purpose of act.

The purpose of the Compressed Fuel Tax Act is to supplement the provisions of the tax upon motor fuels by imposing a tax upon all compressed fuel sold or

distributed for use in motor vehicles registered or required to be registered for operation upon the highways of this state.

Source: Laws 1995, LB 182, § 2; Laws 2000, LB 1067, § 23; Laws 2004, LB 983, § 38.

66-699 Definitions, where found.

For purposes of the Compressed Fuel Tax Act, the definitions found in sections 66-6,100 to 66-6,105 shall be used.

Source: Laws 1995, LB 182, § 3.

66-6,100 Compressed fuel, defined.

Compressed fuel means compressed natural gas, liquefied petroleum gas, liquefied natural gas, butane, and any other type of compressed gas or compressed liquid suitable for fueling a motor vehicle. Compressed fuel does not include motor vehicle fuel as defined in section 66-482 or diesel fuel as defined in section 66-482.

Source: Laws 1995, LB 182, § 4; Laws 2004, LB 983, § 39.

66-6,101 Department, defined.

Department means the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue.

Source: Laws 1995, LB 182, § 5.

66-6,102 Gallon equivalent, defined.

Gallon equivalent means:

(1) For compressed natural gas, the amount of compressed natural gas that is deemed to be the energy equivalent of a gallon of gasoline according to the National Institute of Standards and Technology Handbook 130 entitled Uniform Regulation for the Method of Sale of Commodities, Paragraph 2.27.1.3; or

(2) For liquefied natural gas, the amount of liquefied natural gas that is deemed to be the energy equivalent of a gallon of diesel fuel at diesel fuel's lower heating value of one hundred twenty-eight thousand seven hundred British thermal units, which amount shall be equal to six and six-hundredths pounds of liquefied natural gas.

Source: Laws 1995, LB 182, § 6; Laws 2014, LB867, § 6.

66-6,103 Motor vehicle, defined.

Motor vehicle has the same definition as in section 60-339.

Source: Laws 1995, LB 182, § 7; Laws 2005, LB 274, § 269.

66-6,104 Person, defined.

Person means any individual, firm, partnership, limited liability company, company, agency, association, corporation, state, county, municipality, or other political subdivision. Whenever a fine or imprisonment is prescribed or imposed in the Compressed Fuel Tax Act, the word person as applied to a

partnership, a limited liability company, or an association means the partners or members thereof.

Source: Laws 1995, LB 182, § 8.

66-6,105 Retailer, defined.

Retailer means any person engaged in the business of selling or otherwise providing compressed fuel to consumers of the fuel for use in motor vehicles. Retailer also includes any person, other than a consumer of compressed fuel, who has equipment capable of dispensing compressed fuel into a motor vehicle.

Source: Laws 1995, LB 182, § 9.

66-6,106 Retailer's license; application; issuance; security requirements.

(1) Before engaging in business as a retailer, a person shall obtain a license to transact such business in the State of Nebraska. An application for a retailer's license shall be made to the department on a form prepared and furnished by the department. The application shall contain such information as the department deems necessary. If the applicant is an individual, the application shall include the applicant's social security number.

(2) After reviewing an application received in proper form, the department may issue to the applicant a retailer's license. The department may refuse to issue such license to any person according to the provisions of section 66-729. Each retailer's license shall be valid until suspended or revoked for cause or otherwise canceled and shall not be transferable.

(3) The department, for the first year of a new license or whenever it deems it necessary to insure compliance with the Compressed Fuel Tax Act, may require any retailer subject to the act to place with the department such security as it determines. The amount and duration of the security shall be fixed by the department and shall be approximately two times the estimated average quarterly tax liability payable by such retailer pursuant to the act, unless such retailer is required to file monthly tax returns pursuant to section 66-6,110, in which case the amount of the security shall be approximately three times the estimated monthly tax liability payable by the retailer. The security shall consist of a surety bond executed by a surety company duly licensed and authorized to do business within this state in the amount specified by the department. The security shall run to the department and be conditioned upon the payment of all taxes, interest, penalties, and costs for which such retailer is liable, whether such liability was incurred prior to or after the security is filed.

Source: Laws 1995, LB 182, § 10; Laws 1997, LB 752, § 152; Laws 2004, LB 983, § 40.

66-6,107 Excise tax; amount.

(1) In addition to the tax imposed pursuant to sections 66-6,108, 66-6,109, and 66-6,109.02, an excise tax in an amount set in subsection (2) of this section is levied and imposed on all compressed fuel sold for use in registered motor vehicles.

(2) The tax shall be:

(a) Seven and one-half cents per gallon or gallon equivalent through December 31, 2015;

DIESEL, ALTERNATIVE, AND COMPRESSED FUEL TAXES § 66-6,109.01

(b) Eight cents per gallon or gallon equivalent beginning on January 1, 2016, through December 31, 2016;

(c) Eight and one-half cents per gallon or gallon equivalent beginning on January 1, 2017, through December 31, 2017;

(d) Nine cents per gallon or gallon equivalent beginning on January 1, 2018, through December 31, 2018; and

(e) Nine and one-half cents per gallon or gallon equivalent beginning on January 1, 2019.

Source: Laws 1995, LB 182, § 11; Laws 2004, LB 983, § 41; Laws 2008, LB846, § 16; Laws 2015, LB610, § 5.

66-6,108 Excise tax; amount; credits and refunds; allocation.

Each retailer shall, in addition to all other taxes provided by law, pay an excise tax at the rate set pursuant to section 66-4,144 on all gallons or gallon equivalents of compressed fuel sold for use in registered motor vehicles. All sums of money received under this section shall be credited to the Highway Trust Fund. Credits and refunds of such tax allowed to retailers shall be paid from the Highway Trust Fund. The balance of the amount credited, after credits and refunds, shall be allocated to the Highway Restoration and Improvement Bond Fund if bonds are issued pursuant to subsection (2) of section 39-2223 and to the Highway Cash Fund if no bonds are issued pursuant to such subsection.

Source: Laws 1995, LB 182, § 12.

66-6,109 Excise tax; amount.

(1) In addition to the tax imposed by sections 66-6,107, 66-6,108, and 66-6,109.02, each retailer shall pay an excise tax in an amount set in subsection (2) of this section on all compressed fuel sold for use in registered motor vehicles.

(2) The tax shall be:

(a) Two and eight-tenths cents per gallon or gallon equivalent through December 31, 2015;

(b) Three and eight-tenths cents per gallon or gallon equivalent beginning on January 1, 2016, through December 31, 2016;

(c) Four and eight-tenths cents per gallon or gallon equivalent beginning on January 1, 2017, through December 31, 2017;

(d) Five and eight-tenths cents per gallon or gallon equivalent beginning on January 1, 2018, through December 31, 2018; and

(e) Six and eight-tenths cents per gallon or gallon equivalent beginning on January 1, 2019.

Source: Laws 1995, LB 182, § 13; Laws 2008, LB846, § 18; Laws 2015, LB610, § 6.

66-6,109.01 Fuel used for buses; exemption from tax; when; equalization fee; section, how construed; refund.

(1) Compressed fuel shall be exempt from the taxes imposed under the Compressed Fuel Tax Act when the fuel is used for buses equipped to carry

more than seven persons for hire and engaged entirely in the transportation of passengers for hire within municipalities or within a radius of six miles thereof.

(2) The owner or agent of any bus equipped to carry more than seven persons for hire and engaged entirely in the transportation of passengers for hire within municipalities, or within a radius of six miles thereof, in lieu of the excise tax provided for in the act, shall pay an equalization fee of a sum equal to twice the amount of the registration fee applicable to such vehicle under the laws of this state. Such equalization fee shall be paid in the same manner as the registration fee and be disbursed and allocated as registration fees.

(3) Nothing in this section shall be construed as permitting compressed fuel to be sold tax exempt. The department shall refund tax paid on compressed fuel used in buses deemed exempt by this section.

Source: Laws 1996, LB 1121, § 5; Laws 2004, LB 983, § 42.

66-6,109.02 Retailer; tax on average wholesale price of gasoline; credit to Highway Trust Fund; use; allocation.

(1) For tax periods beginning on and after July 1, 2009, at the time of filing the return required by section 66-6,110, the retailer shall, in addition to the other taxes provided for by law, pay a tax at the rate of five percent of the average wholesale price of gasoline calculated pursuant to section 66-489.02 for the gallons of the compressed fuel as shown by the return, except that there shall be no tax on the compressed fuel reported if it is otherwise exempted by the Compressed Fuel Tax Act.

(2) All sums of money received under this section shall be credited to the Highway Trust Fund. Credits and refunds of such tax allowed to producers, suppliers, distributors, wholesalers, or importers shall be paid from the Highway Trust Fund. The balance of the amount credited, after credits and refunds, shall be allocated as follows:

(a) Sixty-six percent to the Highway Cash Fund for the Department of Transportation;

(b) Seventeen percent to the Highway Allocation Fund for allocation to the various counties for road purposes; and

(c) Seventeen percent to the Highway Allocation Fund for allocation to the various municipalities for street purposes.

Source: Laws 2008, LB846, § 17; Laws 2017, LB339, § 240.

66-6,110 Retailer; return; filing requirements.

Each retailer shall file a tax return with the department on forms prescribed by the department. Annual returns are required if the retailer's yearly tax liability is less than two hundred fifty dollars. Quarterly returns are required if the retailer's yearly tax liability is at least two hundred fifty dollars but less than six thousand dollars. Monthly returns are required if the retailer's yearly tax liability is at least six thousand dollars. The return shall contain a declaration by the person making the return to the effect that the statements contained in the return are true and are made under penalties of law, which declaration has the same force and effect as a verification of the return and is in lieu of such verification. The return shall show such information as the department reasonably requires for the proper administration and enforcement of the Compressed Fuel Tax Act. The retailer shall file the return in such format as prescribed by

the department on or before the twentieth day of the next succeeding calendar month following the reporting period to which it relates. If the final filing date falls on a Saturday, Sunday, or legal holiday, the next secular or business day is the final filing date. The return is filed on time if transmitted or postmarked before midnight of the final filing date.

Source: Laws 1995, LB 182, § 14; Laws 2000, LB 1067, § 24; Laws 2001, LB 168, § 11; Laws 2004, LB 983, § 43; Laws 2012, LB727, § 20.

66-6,111 Tax computation.

The taxes imposed by sections 66-6,107, 66-6,108, and 66-6,109 shall be computed by each retailer by multiplying the tax rate established in sections 66-6,107, 66-6,108, and 66-6,109 by the number of gallons or gallon equivalents of compressed fuel sold for use in registered motor vehicles.

Source: Laws 1995, LB 182, § 15; Laws 2004, LB 983, § 44; Laws 2008, LB846, § 19.

66-6,112 Taxes, interest, and penalties; disposition.

All taxes, interest, and penalties collected under the Compressed Fuel Tax Act shall be remitted to the State Treasurer for credit to the Highway Trust Fund or Highway Cash Fund as appropriate.

Source: Laws 1995, LB 182, § 16.

66-6,113 Compressed fuel tax; collection; commission.

(1) In lieu of the expense of remitting the compressed fuel tax and complying with the statutes and rules and regulations related thereto, every retailer shall be entitled to deduct and withhold a commission of two percent upon the first five thousand dollars and one-half of one percent upon all amounts in excess of five thousand dollars remitted each tax period.

(2) Except as otherwise provided in the Compressed Fuel Tax Act, the per-gallon amount of the tax shall be added to the selling price of every gallon of such compressed fuel sold in this state and shall be collected from the purchaser so that the ultimate consumer bears the burden of the tax. The tax shall be a direct tax on the retail or ultimate consumer precollected for the purpose of convenience and facility to the consumer. The levy and assessment on the retailer as specified in the act shall be as an agent of the state for the precollection of the tax. The provisions of this section shall in no way affect the method of collecting the tax as provided in the act. The tax imposed by this section shall be collected and paid at the time, in the manner, and by those persons specified in the act.

(3) In consideration of receiving the commission provided under subsection (1) of this section, the retailer shall not be entitled to any deductions, credits, or refunds arising out of such retailer's failure or inability to collect any such taxes from any subsequent purchaser of compressed fuel.

(4) A retailer shall not be entitled to a commission provided under subsection (1) of this section for the amount of any understatement or refund of any such taxes collected as a result of a final assessment occurring pursuant to a notice of deficiency determination under section 66-722.

Source: Laws 1995, LB 182, § 17; Laws 1998, LB 1161, § 22; Laws 2012, LB727, § 21.

66-6,114 Retailer; records.

Every retailer shall prepare and maintain such records as the department reasonably requires with respect to inventories, receipts, purchases, and sales or other dispositions of compressed fuel. The records required by this section shall be retained for a minimum period of three years or for five years if the required returns or reports are not filed and shall be available at all reasonable times for audit and examination by the department to determine liability for the payment of the taxes and penalties under the Compressed Fuel Tax Act.

Source: Laws 1995, LB 182, § 18.

66-6,115 Prohibited acts; violation; penalty; transport and delivery vehicles.

(1) The fuel supply tank of a motor vehicle registered or required to be registered for operation on the highway shall not contain or be used with compressed fuel unless the taxes imposed by the Compressed Fuel Tax Act are paid to the retailer of the fuel at the time the fuel is purchased. Any person who violates this section is guilty of a Class IV misdemeanor and, in addition to the taxes imposed by the act, is subject to an administrative penalty of one thousand dollars for each violation to be assessed and collected by the department. All such penalties collected shall be remitted to the State Treasurer for credit to the Highway Trust Fund. All such penalties shall be assessed against the owner of the vehicle as of the date of the violation.

(2) The department shall by rule or regulation adopt a standard miles-per-gallon rating for compressed fuel transport and delivery vehicles that are not equipped with a separate fuel supply tank. The miles-per-gallon rating adopted shall be used by the owners of the vehicles to calculate the amount of fuel tax owed to the state on the fuel consumed from the vehicle's cargo tank for purposes of operating the vehicle. The owners of the vehicles shall pay the excise taxes imposed by the act and make a report concerning the taxes to the department in like manner, form, and time as is required by the act for retailers of compressed fuel.

(3) For purposes of this section:

(a) Owner means registered owner, titleholder, lessee entitled to possession of the motor vehicle, or anyone otherwise maintaining a possessory interest in the motor vehicle, but does not include anyone who, without participating in the use or operation of the motor vehicle and otherwise not engaged in the purpose for which the motor vehicle is being used, holds indicia of ownership primarily to protect his or her security interest in the motor vehicle or who acquired ownership of the motor vehicle pursuant to a foreclosure of a security interest in the motor vehicle; and

(b) Use means to operate, fuel, or otherwise employ.

Source: Laws 1995, LB 182, § 19; Laws 2000, LB 1067, § 25.

66-6,116 Enforcement; rules and regulations.

The department shall enforce the Compressed Fuel Tax Act and the rules and regulations adopted pursuant to the act. The department may adopt and promulgate rules and regulations to carry out the act.

Source: Laws 1995, LB 182, § 20.

ARTICLE 7

MOTOR FUEL TAX ENFORCEMENT AND COLLECTION

Section	
66-701.	Repealed. Laws 1980, LB 954, § 65.
66-702.	Repealed. Laws 1980, LB 954, § 65.
66-703.	Repealed. Laws 1980, LB 954, § 65.
66-704.	Repealed. Laws 1980, LB 954, § 65.
66-705.	Repealed. Laws 1980, LB 954, § 65.
66-706.	Repealed. Laws 1980, LB 954, § 65.
66-707.	Repealed. Laws 1980, LB 954, § 65.
66-708.	Repealed. Laws 1980, LB 954, § 65.
66-709.	Repealed. Laws 1980, LB 954, § 65.
66-710.	Repealed. Laws 1980, LB 954, § 65.
66-711.	Repealed. Laws 1980, LB 954, § 65.
66-712.	Terms, defined.
66-713.	Retailer; license required; when; records.
66-714.	Repealed. Laws 1996, LB 1121, § 18.
66-715.	Repealed. Laws 1996, LB 1121, § 18.
66-716.	Motor fuel distribution, sale, or delivery; license; when required; records.
66-717.	Invoice or billing documents; requirements; licensed producer, supplier, distributor, wholesaler, and importer; statement authorized.
66-718.	Report, return, or other statement; department; powers; electronic filing.
66-719.	Prohibited acts; financial penalties; department; powers; waiver of interest.
66-719.01.	Unlawful transportation; violations; reward for disclosure.
66-720.	License or permit; suspension; grounds; procedure; cancellation; reinstatement fee.
66-721.	Notices; mailing requirements.
66-722.	Returns; review by department; deficiency determination; procedure.
66-723.	Corporate officer or employee; personal liability; collection of taxes; procedures; hearing.
66-724.	Deficiency; late payment; interest.
66-725.	Department; examination of records; investigations.
66-726.	Refund; when allowed; procedures.
66-727.	Prohibited acts; criminal penalties.
66-728.	Jurisdiction.
66-729.	Permit or license; issuance; when; department; powers and duties.
66-730.	Repealed. Laws 2000, LB 1067, § 37.
66-731.	Department; computer system; shared information.
66-732.	Department of Revenue, Attorney General, and Nebraska State Patrol; duties.
66-733.	Producers, suppliers, distributors, wholesalers, and importers; cash bond required; funds created; investment.
66-734.	Cash bond; contribution; how collected.
66-735.	Trust fund; use; delinquency; certification; State Treasurer; duties.
66-736.	Cash bond; contribution; refund; return of trust fund.
66-737.	Repealed. Laws 2012, LB 727, § 58.
66-738.	Motor Fuel Tax Enforcement and Collection Division; created within Department of Revenue; powers and duties; funding; contracts authorized.
66-739.	Motor Fuel Tax Enforcement and Collection Cash Fund; created; use; investment.
66-740.	Repealed. Laws 1999, LB 143, § 8.
66-741.	Federally recognized Indian tribe; agreement with state; authorized.

66-701 Repealed. Laws 1980, LB 954, § 65.

66-702 Repealed. Laws 1980, LB 954, § 65.

66-703 Repealed. Laws 1980, LB 954, § 65.

66-704 Repealed. Laws 1980, LB 954, § 65.

66-705 Repealed. Laws 1980, LB 954, § 65.

66-706 Repealed. Laws 1980, LB 954, § 65.

66-707 Repealed. Laws 1980, LB 954, § 65.

66-708 Repealed. Laws 1980, LB 954, § 65.

66-709 Repealed. Laws 1980, LB 954, § 65.

66-710 Repealed. Laws 1980, LB 954, § 65.

66-711 Repealed. Laws 1980, LB 954, § 65.

66-712 Terms, defined.

For purposes of the Compressed Fuel Tax Act and sections 66-482 to 66-4,149, 66-501 to 66-531, and 66-712 to 66-736:

(1) Department means the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue;

(2) Motor fuel means any fuel defined as motor vehicle fuel in section 66-482, any fuel defined as diesel fuel in section 66-482, and any fuel defined as compressed fuel in section 66-6,100;

(3) Motor fuel laws means the Compressed Fuel Tax Act and sections 66-482 to 66-4,149, 66-501 to 66-531, and 66-712 to 66-736; and

(4) Person means any individual, firm, partnership, limited liability company, company, agency, association, corporation, state, county, municipality, or other political subdivision. Whenever a fine, imprisonment, or both are prescribed or imposed in sections 66-712 to 66-736, the word person as applied to a partnership, a limited liability company, or an association means the partners or members thereof.

Source: Laws 1991, LB 627, § 107; Laws 1993, LB 121, § 398; Laws 1994, LB 1160, § 95; Laws 1995, LB 182, § 52; Laws 1996, LB 1218, § 19; Laws 2004, LB 983, § 45; Laws 2011, LB289, § 35; Laws 2012, LB727, § 22; Laws 2018, LB177, § 3.
Effective date July 19, 2018.

Cross References

Compressed Fuel Tax Act, see section 66-697.

66-713 Retailer; license required; when; records.

(1) Any person operating as a retailer of motor vehicle fuel or diesel fuel in this state shall obtain a license from the department. A separate license shall be issued for each retail location operated by such person.

(2) Every retailer shall keep a complete and accurate record of all motor fuels, to be based on gross gallons, received, purchased, or obtained, which record shows the name and address of the person from whom each transfer or purchase of motor fuels was made, the point from which shipped or delivered, the point at which received, the method of delivery, the quantity of each transfer or purchase, and the total amount of motor fuels sold at retail during the month.

(3) The records shall also include all exempt sales of motor fuels, the date of sale, the quantity sold, and the identity of the purchaser.

(4) The records required by this section shall be retained and be available for audit and examination by the department or its authorized agents during regular business hours for a period of three years.

Source: Laws 1991, LB 627, § 108; Laws 1994, LB 1160, § 96; Laws 1998, LB 1161, § 23; Laws 2004, LB 983, § 46.

66-714 Repealed. Laws 1996, LB 1121, § 18.

66-715 Repealed. Laws 1996, LB 1121, § 18.

66-716 Motor fuel distribution, sale, or delivery; license; when required; records.

(1) Any person owning or possessing motor fuel in this state, including motor fuel stored at a pipeline terminal or barge terminal, for distribution, sale, or delivery in this state shall obtain a license from the department unless such person is already licensed under other sections of the motor fuel laws and is reporting all transactions involving any motor fuel.

(2) Every person licensed under subsection (1) of this section shall keep a complete and accurate record of all motor vehicle fuel, to be based on gross gallons, (a) received, purchased, or obtained, which record shall show the name and address of the person from whom each transfer or purchase of motor vehicle fuel was made, the point from which shipped or delivered, the point at which received, the method of delivery, and the quantity of each transfer or purchase, and (b) delivered or sold, which record shall show the name of the person to whom each transfer or sale of motor vehicle fuel was made, the point from which shipped or delivered, the point at which received, the method of delivery, and the quantity of each transfer or sale.

(3) Every person licensed under subsection (1) of this section shall keep a complete and accurate record of all diesel fuel to include the same information required in subsection (2) of this section and the sales of exempt diesel fuel showing the identity of the purchaser and the quantity sold. The sales of exempt diesel fuel shall include the total exempt sales during the month to each retailer accepting exemption certificates from his or her customers.

Source: Laws 1991, LB 627, § 110; Laws 1994, LB 1160, § 98.

66-717 Invoice or billing documents; requirements; licensed producer, supplier, distributor, wholesaler, and importer; statement authorized.

(1) All producers, suppliers, distributors, wholesalers, and importers and other persons selling motor fuel for resale that have been taxed under the motor fuel laws shall include on all invoices or other billing documents for the motor fuel the amount of the fuel tax or a statement that the Nebraska fuel taxes have been paid on the motor fuel.

(2) If the invoice or other billing document does not contain the amount of the tax or the statement that the Nebraska fuel taxes have been paid, the motor fuel shall be presumed to be untaxed and the purchaser shall be liable for the tax on such fuel.

(3) Any licensed producer, supplier, distributor, wholesaler, or importer who has recorded his or her liability for the tax on the motor fuel with the intent to

remit the tax on the next return that is due may make the statement required by this section.

Source: Laws 1991, LB 627, § 111; Laws 1994, LB 1160, § 99; Laws 2004, LB 983, § 47.

66-718 Report, return, or other statement; department; powers; electronic filing.

(1) The department may require such other information as it deems necessary on any report, return, or other statement under the motor fuel laws.

(2) The Tax Commissioner may require any of the reports, returns, or other filings due from any motor fuels licensees to be filed electronically.

(3) The department shall prescribe the formats or procedures for electronic filing. To the extent not inconsistent with requirements of the motor fuel laws, the department shall adopt formats and procedures that are consistent with other states requiring electronic reporting of motor fuel information.

(4) Any person who does not file electronically when required or who fails to use the prescribed formats and procedures shall be considered to have not filed the return, report, or other filing.

(5) For purposes of the electronic funds transfer requirements contained in section 77-1784, motor vehicle fuel tax, diesel fuel tax, compressed fuel tax, and all other tax programs administered by the Motor Fuel Tax Enforcement and Collection Division shall be considered as comprising one tax program.

Source: Laws 1991, LB 627, § 112; Laws 1997, LB 720, § 19; Laws 1998, LB 1161, § 24; Laws 2000, LB 1067, § 26; Laws 2004, LB 983, § 48.

66-719 Prohibited acts; financial penalties; department; powers; waiver of interest.

(1) Any person who neglects or refuses to file the report or return due for any period or to pay the tax due for any period within the time prescribed for the filing of such report or return or for the payment of such tax under the motor fuel laws shall automatically accrue a penalty of fifty dollars.

(2) Any person who neglects or refuses to file the report or return due for any period or to pay the tax due for any period within ten days after the time prescribed for the filing of such report or return or the payment of such tax under the motor fuel laws shall, in addition to the penalty in subsection (1) of this section, be subject to the larger of:

(a) A penalty of one hundred dollars; or

(b) A penalty of ten percent of the tax not paid.

(3)(a) Notwithstanding anything in subsection (1) or (2) of this section to the contrary, no penalty shall be imposed upon any person who voluntarily reports an underpayment of tax by filing an amended return and paying such tax if such amended return is filed and payment is made within thirty days after the date such tax was due.

(b) Except as provided in subsection (8) of this section, interest shall not be waived on any additional tax due as reported on any amended return, and such interest shall be computed from the date such tax was due.

(4) Any person who neglects or refuses to report and pay motor fuel tax on methanol, naphtha, benzine, benzol, kerosene, or any other volatile, flammable, or combustible liquid that is blended with motor vehicle fuel or undyed diesel fuel shall be subject to a penalty equal to one hundred percent of the tax not paid or one thousand dollars, whichever is larger. Such penalty shall be in addition to the motor fuel tax due and all other penalties provided by law.

(5) If any person knowingly files a false report or return, the penalty shall be equal to one hundred percent of the tax not paid or one thousand dollars, whichever is larger, which penalty shall be in addition to all other penalties provided by law.

(6) Any person who knowingly conducts any activities requiring a license or permit under the motor fuel laws without a license or permit or after a license or permit has been surrendered, suspended, or canceled shall automatically accrue a penalty of one hundred dollars per day for each day such violation continues.

(7) The department may in its discretion waive all or any portion of the penalties incurred upon sufficient showing by the taxpayer that the failure to file or pay is not due to negligence, intentional disregard of the law, rules, or regulations, intentional evasion of the tax, or fraud committed with intent to evade the tax or that such penalties should otherwise be waived.

(8) The department may in its discretion waive any and all interest incurred upon sufficient showing by the taxpayer that such interest should be waived.

(9) All penalties collected by the department under this section shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

Source: Laws 1991, LB 627, § 114; Laws 1993, LB 440, § 11; Laws 1996, LB 1121, § 6; Laws 2000, LB 1067, § 27; Laws 2010, LB879, § 4.

66-719.01 Unlawful transportation; violations; reward for disclosure.

The department may pay to any person, other than a state officer or employee, who furnishes original information that any person has failed to file the reports required on motor vehicle fuel or diesel fuel imported into the State of Nebraska or has failed to pay the tax on the sale or use of motor vehicle fuel, diesel fuel, or compressed fuel as provided by the laws of this state, such a share of the tax and penalties recovered as the department may deem reasonable and just, not exceeding thirty percent, if it appears that the recovery was had in consequence of the information furnished.

Source: Laws 1933, c. 47, § 3, p. 260; Laws 1935, c. 130, § 10, p. 468; C.S.Supp.,1941, § 66-424; R.S.1943, § 66-439; R.S.1943, (1990), § 66-439; Laws 1991, LB 627, § 35; R.S.Supp.,1992, § 66-4,113; Laws 1994, LB 1160, § 112; Laws 1995, LB 182, § 53.

66-720 License or permit; suspension; grounds; procedure; cancellation; reinstatement fee.

(1) Any license or permit issued by the department under the motor fuel laws may be suspended for the following reasons:

- (a) Cancellation of security;
- (b) Failure to provide additional security as required;

- (c) Failure to file any report or return, filing an incomplete report or return, or not filing electronically, within the time provided;
 - (d) Failure to pay taxes due within the time provided;
 - (e) Filing of any false report, return, statement, or affidavit, knowing it to be false;
 - (f) Delivering motor fuel to a Nebraska destination if Nebraska is not listed as the destination state on the original bill of sale, bill of lading, or manifest except as authorized under section 66-503;
 - (g) Failure to remain in compliance with requirements of the State Fire Marshal regarding underground storage tanks;
 - (h) Failure to remain in compliance with requirements of the Department of Agriculture regarding weights and measures;
 - (i) Using or placing dyed diesel fuel in a motor vehicle except as authorized under section 66-495.01;
 - (j) No longer being eligible to obtain a license or permit; or
 - (k) Any other violation of the motor fuel laws or the rules and regulations.
- (2) The department shall mail notice of suspension of any license or permit.
- (3) The licensee or permitholder may, within sixty days after the mailing of the notice of such suspension, petition the Department of Revenue in writing for a hearing and reconsideration of such suspension. If a petition is filed, the department shall, within ten days of receipt of the petition, set a hearing date at which the licensee or permitholder may show cause why his or her suspended license or permit should not be canceled. The department shall give the licensee or permitholder reasonable notice of the time and place of such hearing. Within a reasonable time after the conclusion of the hearing, the department shall issue an order either reinstating or canceling such license or permit.
- (4) If a petition is not filed within the sixty-day period, the suspended license or permit shall be canceled by the department at the expiration of the period.
- (5) The department shall not issue a new permit or license to the same person for one year from the date of cancellation. Any reissuance of a permit or license to the same person within three years from the date of cancellation shall require a reinstatement fee of one hundred dollars to be submitted to the department. The department shall remit the fee to the State Treasurer for credit to the Highway Cash Fund.
- (6) Suspension or cancellation of a license or permit issued by the department shall not relieve any person from making or filing the reports or returns required by the motor fuel laws in the manner or within the time required.

Source: Laws 1991, LB 627, § 115; Laws 1992, LB 1013, § 15; Laws 1993, LB 440, § 12; Laws 1994, LB 1160, § 100; Laws 1996, LB 1121, § 7; Laws 2004, LB 983, § 49; Laws 2008, LB914, § 2.

66-721 Notices; mailing requirements.

All notices by the department required by the motor fuel laws shall be mailed to the address of the licensee or permitholder as shown on the records of the department.

Source: Laws 1991, LB 627, § 116; Laws 2012, LB727, § 23.

66-722 Returns; review by department; deficiency determination; procedure.

(1) As soon as practical after a return is filed, the department shall examine it to determine the correct amount of tax. If the department finds that the amount of tax shown on the return is less than the correct amount, it shall notify the taxpayer of the amount of the deficiency determined.

(2) If any person fails to file a return or has improperly purchased motor fuel without the payment of tax, the department shall estimate the person's liability from any available information and notify the person of the amount of the deficiency determined.

(3) The amount of the deficiency determined shall constitute a final assessment together with interest and penalties sixty days after the date on which notice was mailed to the taxpayer at his or her last-known address unless a written protest is filed with the department within such sixty-day period.

(4) The final assessment provisions of this section shall constitute a final decision of the agency for purposes of the Administrative Procedure Act.

(5) An assessment made by the department shall be presumed to be correct. In any case when the validity of the assessment is questioned, the burden shall be on the person who challenges the assessment to establish by a preponderance of the evidence that the assessment is erroneous or excessive.

(6)(a) Except in the case of a fraudulent return or of neglect or refusal to make a return, the notice of a proposed deficiency determination shall be mailed within three years after the twentieth day of the month following the end of the period for which the amount proposed is to be determined or within three years after the return is filed, whichever period expires later.

(b) The taxpayer and the department may agree, prior to the expiration of the period in subdivision (a) of this subsection, to extend the period during which the notice of a deficiency determination can be mailed. The extension of the period for the mailing of a deficiency determination shall also extend the period during which a refund can be claimed.

Source: Laws 1991, LB 627, § 117; Laws 2000, LB 1067, § 28; Laws 2004, LB 983, § 50; Laws 2008, LB914, § 3; Laws 2012, LB727, § 24.

Cross References

Administrative Procedure Act, see section 84-920.

66-723 Corporate officer or employee; personal liability; collection of taxes; procedures; hearing.

(1) Any corporate officer or employee with the authority to decide whether the corporation will pay the taxes imposed upon a corporation by the motor fuel laws, to file any reports or returns required by the motor fuel laws, or to perform any other act required of a corporation under the motor fuel laws shall be personally liable for the payment of the taxes, interest, penalties, or other administrative penalties in the event of willful failure on his or her part to have the corporation perform such act. Such taxes shall be collected in the same manner as provided under the Uniform State Tax Lien Registration and Enforcement Act.

(2) Within sixty days after the day on which the notice and demand are made for the payment of such taxes, any corporate officer or employee seeking to

challenge the Tax Commissioner's determination as to his or her personal liability for the corporation's unpaid taxes may petition for a redetermination. The petition may include a request for the redetermination of the personal liability of the corporate officer or employee, the redetermination of the amount of the corporation's unpaid taxes, or both. If a petition for redetermination is not filed within the sixty-day period, the determination becomes final at the expiration of the period.

(3) If the requirements prescribed in subsection (2) of this section are satisfied, the Tax Commissioner shall abate collection proceedings and shall grant the corporate officer or employee an oral hearing and give him or her ten days' notice of the time and place of such hearing. The Tax Commissioner may continue the hearing from time to time as necessary.

(4) Any notice required under this section shall be served personally or by mail in the manner provided in section 66-721.

(5) If the Tax Commissioner determines that further delay in the collection of such taxes from the corporate officer or employee will jeopardize future collection proceedings, nothing in this section shall prevent the immediate collection of such taxes.

(6) For purposes of this section:

(a) Corporation shall mean any corporation and any other entity that is taxed as a corporation under the Internal Revenue Code;

(b) Taxes shall mean all taxes and additions to taxes including interest and penalties imposed under the motor fuel laws which are administered by the Tax Commissioner; and

(c) Willful failure shall mean that failure which was the result of an intentional, conscious, and voluntary action.

Source: Laws 1991, LB 627, § 118; Laws 1993, LB 440, § 13; Laws 1996, LB 1041, § 2; Laws 2000, LB 1067, § 29; Laws 2008, LB914, § 4.

Cross References

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

66-724 Deficiency; late payment; interest.

All deficiencies determined by the department and any tax paid after the time provided shall accrue interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, on such deficiency or late payment from the date such tax was due to the date of payment.

Source: Laws 1991, LB 627, § 119; Laws 1992, Fourth Spec. Sess., LB 1, § 9.

66-725 Department; examination of records; investigations.

The department may examine the records of any person holding a license or permit, required to hold a license or permit, or purchasing motor fuel without the payment of tax at any time during regular business hours and make such other investigations as it deems necessary for the proper and efficient administration and enforcement of the motor fuel laws.

Source: Laws 1991, LB 627, § 120.

66-726 Refund; when allowed; procedures.

(1) The department may adjust all errors in payment, refund tax paid on motor fuel destroyed, refund tax overpaid on motor fuel, and refund an amount equal to the per-gallon tax imposed by this state on sales of motor fuel on which tax was paid in this state but which was sold in a state other than Nebraska.

(2)(a) Motor fuels shall be exempt from the taxes imposed by sections 66-489, 66-489.02, 66-4,105, 66-4,140, 66-4,145, and 66-4,146 when the fuels are used for agricultural, quarrying, industrial, or other nonhighway use.

(b) The department shall refund tax paid on motor fuels used for an exempt purpose. The purchaser of tax-paid motor fuels used for an exempt purpose shall file a claim for refund with the department on forms prescribed by the department and shall provide such documentation and maintain such records as the department reasonably requires to substantiate that the fuels were used for exempt purposes.

(c) The refund claim shall include: (i) The name of claimant; (ii) the make, horsepower, and other mechanical description of machinery in which the motor fuels were used; (iii) a statement as to the source or place of business where such motor fuels, used solely for agricultural, quarrying, industrial, or other nonhighway uses, were acquired; that no part of such motor fuels were used in propelling licensed motor vehicles; and that the motor fuels for which refund of the tax thereon is claimed were used solely for agricultural, quarrying, industrial, or other nonhighway uses; and (iv) any other information deemed necessary by the department.

(d) The department shall deduct (i) from each claim for refund of tax paid on purchases of motor vehicle fuels under this subsection two and one-quarter cents per gallon through December 31, 2004, and commencing January 1, 2010, and three and one-half cents per gallon commencing January 1, 2005, through December 31, 2009, of the tax paid and (ii) from each claim for refund of tax paid on purchases of diesel fuel under this subsection one cent per gallon of the tax paid.

(e) The department shall transmit monthly to the State Treasurer a report of the number of gallons of motor vehicle fuel for which refunds have been approved under this subsection. Through December 31, 2004, and commencing January 1, 2010, the State Treasurer shall thereupon transfer from the Highway Trust Fund to the Agricultural Alcohol Fuel Tax Fund one and one-quarter cents per gallon approved for refund, and commencing January 1, 2005, through December 31, 2009, the State Treasurer shall thereupon transfer from the Highway Trust Fund (a) to the Ethanol Production Incentive Cash Fund one and one-quarter cents per gallon approved for refund and (b) to the Agricultural Alcohol Fuel Tax Fund one and one-quarter cents per gallon approved for refund.

(3) No refund shall be allowed unless a claim is filed setting forth the circumstances by reason of which refund should be allowed. Such claim shall be filed with the department within three years from the date of the payment of the tax.

(4) In each calendar year, no claim for refund related to motor vehicle fuel, diesel fuel, aircraft fuel, or compressed fuel can be for an amount less than twenty-five dollars.

(5) The department shall administer and enforce this section. The department may call to its aid when necessary any member of the Nebraska State Patrol, any police officer, any county attorney, or the Attorney General. The employees

of the department are empowered to stop and inspect motor vehicles, to inspect premises, and temporarily to impound motor vehicles or motor fuels when necessary to administer this section.

(6) The department may adopt and promulgate such rules and regulations as are necessary for the prompt and effective enforcement of this section.

(7) Any claimant for refund of motor fuels tax under this section who is unable to produce the original copy of any invoice to substantiate the refund for the reason that the same has been lost, mutilated, or destroyed may make proof of his or her claim by affidavit and such other evidence as may be required by the department, and if such claim is verified by investigation, such claim may be allowed.

(8) The changes made to this section by Laws 2004, LB 983, apply to motor fuels purchased during any tax year ending or deemed to end on or after January 1, 2005, under the Internal Revenue Code.

Source: Laws 1991, LB 627, § 121; Laws 1992, LB 1013, § 16; Laws 1994, LB 1160, § 101; Laws 1995, LB 182, § 54; Laws 2004, LB 983, § 51; Laws 2004, LB 1065, § 4; Laws 2008, LB846, § 20.

66-727 Prohibited acts; criminal penalties.

(1) It shall be unlawful for any person to:

(a) Knowingly import, distribute, sell, produce, refine, compound, blend, or use any motor vehicle fuel, diesel fuel, or compressed fuel in the State of Nebraska without remitting the full amount of tax imposed by the provisions of the motor fuel laws;

(b) Refuse or knowingly and intentionally fail to make and file any return, report, or statement required by the motor fuel laws in the manner or within the time required;

(c) Knowingly and with intent to evade or to aid or abet any other person in the evasion of the tax imposed by the motor fuel laws (i) make any false or incomplete report, return, or statement, (ii) conceal any material fact in any record, report, return, or affidavit provided for in the motor fuel laws, (iii) improperly claim any exemption from tax imposed by the motor fuel laws, or (iv) create or submit any false documentation purporting to show that tax-free fuel has been purchased or sold tax paid or that tax-paid fuel has been used for a tax-exempt purpose;

(d) Knowingly conduct any activities requiring a license under the provisions of the Petroleum Release Remedial Action Act, the Compressed Fuel Tax Act, and Chapter 66, articles 4, 5, and 7, without a license or after a license has been surrendered, suspended, or canceled;

(e) Knowingly conduct any activities requiring a permit under the provisions of the motor fuel laws without such permit or after such permit has been surrendered, suspended, or canceled;

(f) Knowingly assign or attempt to assign a license or permit;

(g) Knowingly fail to keep and maintain books and records required by the motor fuel laws;

(h) Knowingly fail or refuse to pay a fuel tax when due;

(i) Knowingly make any false statement in connection with an application for the refund of any money or tax;

(j) Fail or refuse to produce for inspection any license or permit issued under the motor fuel laws; or

(k) Knowingly violate any of the motor fuel laws or any rule or regulation under the motor fuel laws.

(2) Any person who violates subdivision (1)(b), (f), (h), or (k) of this section shall be guilty of a Class IV felony. Failing to report or pay taxes due shall constitute a separate offense for each reporting period.

(3) Any person who violates subdivision (1)(a), (c), (d), (g), or (i) of this section shall be guilty of a Class IV felony if the amount of tax involved is less than five thousand dollars and a Class III felony if the amount of tax is five thousand dollars or more. Failing to report or pay taxes due shall constitute a separate offense for each reporting period.

(4) Any person who violates subdivision (1)(e) or (j) of this section shall be guilty of a separate Class IV misdemeanor for each day of operation.

Source: Laws 1991, LB 627, § 122; Laws 1993, LB 440, § 14; Laws 1994, LB 1160, § 102; Laws 1995, LB 182, § 55; Laws 1996, LB 1121, § 8; Laws 1996, LB 1218, § 20; Laws 2000, LB 1067, § 30; Laws 2004, LB 983, § 52.

Cross References

Compressed Fuel Tax Act, see section 66-697.

Petroleum Release Remedial Action Act, see section 66-1501.

66-728 Jurisdiction.

An offense committed in violation of section 66-727 shall be deemed an act committed in part in the principal office of the department. The Attorney General shall have concurrent jurisdiction with the county attorney in the prosecution of such offenses which may be conducted in any county in which the offender resides or has a place of business or in which the crime was committed.

Source: Laws 1991, LB 627, § 123.

66-729 Permit or license; issuance; when; department; powers and duties.

After reviewing an application received in proper form, the department may issue to the applicant a permit or license. The department may refuse to issue a permit or license to any person:

(1) Who previously had a permit or license issued under the motor fuel laws of any state which, prior to the time of filing the application, has been suspended or canceled for cause;

(2) Who is a subterfuge for the real party in interest whose license, prior to the time of filing the application, has been suspended or canceled for cause;

(3) Which has as a partner, limited liability company member, or shareholder, with a ten percent or larger ownership interest, any person who is unable to obtain a license or permit in his or her own name;

(4) Who is not in compliance with requirements of the State Fire Marshal regarding underground storage tanks;

(5) Who is not in compliance with the Department of Agriculture regarding weights and measures;

(6) Who has been convicted of a felony in the last ten years; or

(7) Upon other sufficient cause being shown.

Before such refusal, the department shall grant the applicant a hearing and shall grant him or her at least ten days' written notice of the time and place.

Source: Laws 1991, LB 627, § 124; Laws 1993, LB 121, § 399; Laws 1994, LB 884, § 83; Laws 1996, LB 1121, § 9.

66-730 Repealed. Laws 2000, LB 1067, § 37.

66-731 Department; computer system; shared information.

(1) The department shall develop, implement, and maintain a computer system for the automated recording and analysis of the motor vehicle fuel tax, the diesel fuel tax, and related information. The system shall be capable of directly accepting and recording data filed by magnetic media.

(2) The department shall share information pertaining to motor fuel use, tax collection, and related information with the Department of Agriculture, the State Fire Marshal, and the Nebraska State Patrol. The information shall be made available to these agencies and to any other state, federal, or local agency with a valid need for the information as determined by the Department of Revenue.

(3) The department may forward to any agency in this state, to the officials to whom are entrusted the enforcement of the motor fuel tax laws of any other state, the District of Columbia, the United States, its territories and possessions, and the provinces or the Dominion of Canada, or to any other person any information which the department may have relative to the receipt, storage, delivery, sale, use, or other disposition of motor fuel.

(4) The department may forward to any person statistical information, lists of licensees or permitholders, or totals for any licensee or permitholder.

Source: Laws 1991, LB 627, § 126; Laws 1994, LB 1160, § 103; Laws 1996, LB 1121, § 10.

66-732 Department of Revenue, Attorney General, and Nebraska State Patrol; duties.

With funds appropriated for such purposes, the department, the Attorney General, and the Nebraska State Patrol shall each dedicate staff personnel and associated costs for the training of personnel and the review, development, enforcement, and prosecution of the motor fuel laws and the penalties associated with the failure to completely comply with the motor fuel laws, rules, and regulations.

It is the intent of this Legislature that the activities of the department, the Attorney General, and the Nebraska State Patrol be coordinated with activities of each other and all other local, state, and federal agencies involved with the development and enforcement of related laws, rules, and regulations.

Source: Laws 1991, LB 627, § 127; Laws 1992, LB 1013, § 18.

66-733 Producers, suppliers, distributors, wholesalers, and importers; cash bond required; funds created; investment.

(1) All motor fuel producers, suppliers, distributors, wholesalers, and importers licensed under section 3-149 or 66-484 and all retailers licensed under

section 66-6,106 shall jointly furnish a cash bond to the state to secure the payment of all fuel taxes.

(2) The cash bond shall be held by the State Treasurer in a motor fuel trust fund, which fund is hereby created, for the benefit of producers, suppliers, distributors, wholesalers, importers, and retailers. No producer, supplier, distributor, wholesaler, importer, or retailer shall have any claim or rights against the fund as a separate person. Any money in the diesel fuel importers trust fund and the motor vehicle fuel importers trust fund on March 30, 1995, shall be transferred to the motor fuel trust fund on such date.

(3) All funds in the trust fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act and may be pooled with other funds for the purposes of section 72-1267.

Source: Laws 1985, LB 273, § 25; R.S.1943, (1990), § 66-610.01; Laws 1991, LB 627, § 128; Laws 1994, LB 1066, § 52; Laws 1994, LB 1160, § 104; Laws 1995, LB 182, § 56; Laws 2004, LB 983, § 53.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

66-734 Cash bond; contribution; how collected.

(1) The contribution for the cash bond required in section 66-733 shall be collected by the department each tax period with the tax return for all such periods beginning on and after September 30, 1985. The amount due shall be deemed to be tax for the purpose of collection or refund.

(2) The amount collected each tax period from the motor fuel producers, suppliers, distributors, wholesalers, importers, and retailers shall be the portion of the commission allowed which equals one-fourth of one percent of the total tax due.

(3) The contributions from the motor fuel producers, suppliers, distributors, wholesalers, importers, and retailers shall continue to be collected until the amount in the trust fund, including interest earned, is equal to one percent of the total motor fuel tax collected during the preceding year. The contributions shall resume whenever the amount is less than one-half of one percent of the motor fuel tax collected during the preceding year.

(4) The department shall notify the producers, suppliers, distributors, wholesalers, importers, and retailers whenever it is necessary for the contributions to resume. The contributions shall begin with the first tax return that is due at least thirty days after notice is provided by the department.

Source: Laws 1985, LB 273, § 26; R.S.1943, (1990), § 66-610.02; Laws 1991, LB 627, § 129; Laws 1994, LB 1160, § 105; Laws 1995, LB 182, § 57; Laws 2004, LB 983, § 54.

66-735 Trust fund; use; delinquency; certification; State Treasurer; duties.

(1) Money in the trust fund created pursuant to section 66-733 shall be used solely for the purpose of preventing a loss to the state for fuel taxes that are not paid.

(2) Whenever the department determines that fuel tax has been delinquent for ninety days, it shall certify the delinquent amount of tax and the interest due

thereon to the State Treasurer. The certification shall include the specific fund into which the tax would have been deposited if received.

(3) Upon receipt of the certification, the State Treasurer shall transfer the amount to the fund identified.

(4) Such transfer shall not affect the liability of the producer, supplier, distributor, wholesaler, importer, or retailer to the state.

Source: Laws 1985, LB 273, § 27; Laws 1988, LB 1039, § 10; R.S.1943, (1990), § 66-610.03; Laws 1991, LB 627, § 130; Laws 1994, LB 1160, § 106; Laws 1995, LB 182, § 58; Laws 2004, LB 983, § 55.

66-736 Cash bond; contribution; refund; return of trust fund.

(1) A refund of the contributions made pursuant to section 66-734 shall be made only when there is a refund of the tax on which the contribution is calculated or when there was an error in the calculation.

(2) If the cash bond is abolished, the money in the trust fund shall be returned to the producers, suppliers, distributors, wholesalers, importers, and retailers who are then licensed by increasing the commission by the amount specified for the contributions. The reduction in collections because of the additional amount allowed to the producers, suppliers, distributors, wholesalers, importers, and retailers shall be replaced by a transfer from the cash bond to the appropriate highway fund.

Source: Laws 1985, LB 273, § 28; R.S.1943, (1990), § 66-610.04; Laws 1991, LB 627, § 131; Laws 1994, LB 1160, § 107; Laws 1995, LB 182, § 59; Laws 2004, LB 983, § 56.

66-737 Repealed. Laws 2012, LB 727, § 58.

66-738 Motor Fuel Tax Enforcement and Collection Division; created within Department of Revenue; powers and duties; funding; contracts authorized.

The Motor Fuel Tax Enforcement and Collection Division is hereby created within the Department of Revenue. The division shall be funded by a separate appropriation program within the department. All provisions of the Compressed Fuel Tax Act, the Petroleum Release Remedial Action Act, the State Aeronautics Act, and sections 66-482 to 66-4,149, 66-501 to 66-531, and 66-712 to 66-736, pertaining to the Department of Revenue, the Tax Commissioner, or the division, shall be entirely and separately undertaken and enforced by the division, except that the division may utilize services provided by other programs of the Department of Revenue in functional areas known on July 1, 1991, as the budget subprograms designated revenue operations and administration. Appropriations for the division that are used to fund costs allocated for such functional operations shall be expended by the division in an appropriate pro rata share and shall be subject to audit by the Auditor of Public Accounts, at such time as he or she determines necessary, which audit shall be provided to the budget division of the Department of Administrative Services and the Legislative Fiscal Analyst by October 1 of the year under audit. Audit information useful to other divisions of the Department of Revenue may be shared by the Motor Fuel Tax Enforcement and Collection Division with the other divisions of the department and the Division of Motor Carrier Services of the Department of Motor Vehicles, but audits shall not be considered as a functional operation for purposes of this section. Except for staff performing in

functional areas, staff funded from the separate appropriation program shall only be utilized to carry out the provisions of such acts and sections. The auditors and field investigators in the Motor Fuel Tax Enforcement and Collection Division shall be adequately trained for the purposes of motor fuel tax enforcement and collection. The Tax Commissioner shall hire for or assign to the division sufficient staff to carry out the responsibility of the division for the enforcement of the motor fuel laws.

Funds appropriated to the division may also be used to contract with other public agencies or private entities to aid in the issuance of motor fuel delivery permit numbers as provided in subsection (2) of section 66-503, and such contracted funds shall only be used for such purpose. The amount of any contracts entered into pursuant to this section shall be appropriated and accounted for in a separate budget subprogram of the division.

Source: Laws 1991, LB 627, § 141; Laws 1994, LB 1160, § 109; Laws 1996, LB 1121, § 11; Laws 1996, LB 1218, § 21; Laws 1999, LB 143, § 4; Laws 2011, LB289, § 36; Laws 2011, LB337, § 4; Laws 2012, LB727, § 25; Laws 2017, LB339, § 241.

Cross References

Compressed Fuel Tax Act, see section 66-697.

Petroleum Release Remedial Action Act, see section 66-1501.

State Aeronautics Act, see section 3-154.

66-739 Motor Fuel Tax Enforcement and Collection Cash Fund; created; use; investment.

There is hereby created the Motor Fuel Tax Enforcement and Collection Cash Fund. Such fund shall consist of appropriations to the fund and money transferred to it pursuant to section 39-2215. The fund shall be used exclusively for the costs of the Motor Fuel Tax Enforcement and Collection Division created by section 66-738 and other related costs for the Department of Agriculture, the Nebraska State Patrol, and functional areas of the Department of Revenue as provided by such section, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Motor Fuel Tax Enforcement and Collection Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1991, LB 627, § 142; Laws 1994, LB 1066, § 53; Laws 1994, LB 1160, § 110; Laws 2009, First Spec. Sess., LB3, § 40.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

66-740 Repealed. Laws 1999, LB 143, § 8.

66-741 Federally recognized Indian tribe; agreement with state; authorized.

(1) The Governor or his or her designated representative may negotiate an agreement with the governing body of any federally recognized Indian tribe within the State of Nebraska concerning the collection and dissemination of any motor fuel tax on sales of motor fuel made on a federally recognized Indian reservation or on land held in trust for a Nebraska-based federally recognized Indian tribe. The agreement shall specify:

- (a) Its duration;

- (b) Its purpose;
- (c) Provisions for administering, collecting, and enforcing the agreement;
- (d) Remittance of taxes collected;
- (e) The division of the proceeds of the tax between the parties;
- (f) The method to be employed in accomplishing the partial or complete termination of the agreement; and
- (g) Any other necessary and proper matters.

(2) The agreement shall require that the state motor fuel tax and any tribal motor fuel tax be identical in rate and base of transactions.

(3) An Indian tribe accepting an agreement under this section shall agree not to license or otherwise authorize an individual tribal member or other person or entity to sell motor fuel in violation of the terms of the agreement.

Source: Laws 2001, LB 172, § 11; Laws 2007, LB537, § 1.

ARTICLE 8

GASOHOL AND ENERGY DEVELOPMENT

Cross References

Ethanol Development Act, see section 66-1330.

(a) NEBRASKA GASOHOL AND ENERGY DEVELOPMENT ACT

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|---------|------------------------------------|
| Section | |
| 66-801. | Repealed. Laws 1993, LB 364, § 26. |
| 66-802. | Repealed. Laws 1993, LB 364, § 26. |
| 66-803. | Repealed. Laws 1993, LB 364, § 26. |
| 66-804. | Repealed. Laws 1993, LB 364, § 26. |
| 66-805. | Repealed. Laws 1993, LB 364, § 26. |
| 66-806. | Repealed. Laws 1993, LB 364, § 26. |
| 66-807. | Repealed. Laws 1993, LB 364, § 26. |
| 66-808. | Repealed. Laws 1993, LB 364, § 26. |
| 66-809. | Repealed. Laws 1993, LB 364, § 26. |
| 66-810. | Repealed. Laws 1993, LB 364, § 26. |
| 66-811. | Repealed. Laws 1993, LB 364, § 26. |
| 66-812. | Repealed. Laws 1993, LB 364, § 26. |
| 66-813. | Repealed. Laws 1993, LB 364, § 26. |
| 66-814. | Repealed. Laws 1993, LB 364, § 26. |
| 66-815. | Repealed. Laws 1993, LB 364, § 26. |
| 66-816. | Repealed. Laws 1993, LB 364, § 26. |
| 66-817. | Repealed. Laws 1986, LB 993, § 1. |
| 66-818. | Repealed. Laws 1986, LB 993, § 1. |
| 66-819. | Repealed. Laws 1993, LB 364, § 26. |
| 66-820. | Transferred to section 66-1338. |

(b) DEPARTMENT OF TRANSPORTATION, USE OF GASOHOL

- | | |
|---------|---|
| 66-821. | Terms, defined. |
| 66-822. | Department; motor vehicles; use of gasohol. |
| 66-823. | Department; gasohol; storage and dispensing facilities. |
| 66-824. | Department; gasohol; use; conditions. |

(c) ALCOHOL PLANT OR FACILITY DEVELOPMENT

- | | |
|---------|-------------------|
| 66-825. | Unconstitutional. |
| 66-826. | Unconstitutional. |
| 66-827. | Unconstitutional. |
| 66-828. | Unconstitutional. |
| 66-829. | Unconstitutional. |
| 66-830. | Unconstitutional. |
| 66-831. | Unconstitutional. |

Section	
66-832.	Unconstitutional.
66-833.	Unconstitutional.
66-834.	Unconstitutional.
66-835.	Unconstitutional.
66-836.	Unconstitutional.
66-837.	Unconstitutional.
66-838.	Unconstitutional.
66-839.	Unconstitutional.
66-840.	Unconstitutional.
66-841.	Unconstitutional.

(a) NEBRASKA GASOHOL AND ENERGY DEVELOPMENT ACT

66-801 Repealed. Laws 1993, LB 364, § 26.**66-802 Repealed. Laws 1993, LB 364, § 26.****66-803 Repealed. Laws 1993, LB 364, § 26.****66-804 Repealed. Laws 1993, LB 364, § 26.****66-805 Repealed. Laws 1993, LB 364, § 26.****66-806 Repealed. Laws 1993, LB 364, § 26.****66-807 Repealed. Laws 1993, LB 364, § 26.****66-808 Repealed. Laws 1993, LB 364, § 26.****66-809 Repealed. Laws 1993, LB 364, § 26.****66-810 Repealed. Laws 1993, LB 364, § 26.****66-811 Repealed. Laws 1993, LB 364, § 26.****66-812 Repealed. Laws 1993, LB 364, § 26.****66-813 Repealed. Laws 1993, LB 364, § 26.****66-814 Repealed. Laws 1993, LB 364, § 26.****66-815 Repealed. Laws 1993, LB 364, § 26.****66-816 Repealed. Laws 1993, LB 364, § 26.****66-817 Repealed. Laws 1986, LB 993, § 1.****66-818 Repealed. Laws 1986, LB 993, § 1.****66-819 Repealed. Laws 1993, LB 364, § 26.****66-820 Transferred to section 66-1338.**

(b) DEPARTMENT OF TRANSPORTATION, USE OF GASOHOL

66-821 Terms, defined.

For purposes of sections 66-821 to 66-824, unless the context otherwise requires:

(1) Gasohol shall mean gasoline which contains a minimum of ten percent blend of an agricultural ethyl alcohol whose purity shall be at least ninety-nine

percent alcohol, excluding denaturant, produced from cereal grains or domestic agricultural commodities; and

(2) Department shall mean the Department of Transportation.

Source: Laws 1979, LB 74, § 1; Laws 1981, LB 104, § 3; Laws 1985, LB 346, § 5; Laws 2017, LB339, § 242.

66-822 Department; motor vehicles; use of gasohol.

The department shall, not later than July 1, 1980, implement a program of using gasohol as fuel in motor vehicles owned or operated by the department which are designed to operate on such fuel.

Source: Laws 1979, LB 74, § 2; Laws 2017, LB339, § 243.

66-823 Department; gasohol; storage and dispensing facilities.

The department shall provide storage and dispensing facilities at various sites in the state which will make gasohol reasonably accessible to all department vehicles equipped for its use.

Source: Laws 1979, LB 74, § 3.

66-824 Department; gasohol; use; conditions.

The department shall be required to comply with sections 66-821 to 66-824 only to the extent that gasohol supplies are available. The department shall purchase gasohol for use in its motor vehicles only if, and to the extent that, the cost of the gasohol does not exceed the cost of the fuel otherwise used in such vehicle by more than ten percent.

Source: Laws 1979, LB 74, § 4.

(c) ALCOHOL PLANT OR FACILITY DEVELOPMENT

66-825 Unconstitutional.

Note: The Revisor of Statutes has pursuant to section 49-705 omitted sections 66-825 to 66-841 because the Supreme Court in State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979), held such sections from LB 571, Laws 1979, to be unconstitutional.

66-826 Unconstitutional.

Note: The Revisor of Statutes has pursuant to section 49-705 omitted sections 66-825 to 66-841 because the Supreme Court in State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979), held such sections from LB 571, Laws 1979, to be unconstitutional.

66-827 Unconstitutional.

Note: The Revisor of Statutes has pursuant to section 49-705 omitted sections 66-825 to 66-841 because the Supreme Court in State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979), held such sections from LB 571, Laws 1979, to be unconstitutional.

66-828 Unconstitutional.

Note: The Revisor of Statutes has pursuant to section 49-705 omitted sections 66-825 to 66-841 because the Supreme Court in State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979), held such sections from LB 571, Laws 1979, to be unconstitutional.

66-829 Unconstitutional.

Note: The Revisor of Statutes has pursuant to section 49-705 omitted sections 66-825 to 66-841 because the Supreme Court in State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979), held such sections from LB 571, Laws 1979, to be unconstitutional.

66-830 Unconstitutional.

Note: The Revisor of Statutes has pursuant to section 49-705 omitted sections 66-825 to 66-841 because the Supreme Court in State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979), held such sections from LB 571, Laws 1979, to be unconstitutional.

66-831 Unconstitutional.

Note: The Revisor of Statutes has pursuant to section 49-705 omitted sections 66-825 to 66-841 because the Supreme Court in State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979), held such sections from LB 571, Laws 1979, to be unconstitutional.

66-832 Unconstitutional.

Note: The Revisor of Statutes has pursuant to section 49-705 omitted sections 66-825 to 66-841 because the Supreme Court in State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979), held such sections from LB 571, Laws 1979, to be unconstitutional.

66-833 Unconstitutional.

Note: The Revisor of Statutes has pursuant to section 49-705 omitted sections 66-825 to 66-841 because the Supreme Court in State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979), held such sections from LB 571, Laws 1979, to be unconstitutional.

66-834 Unconstitutional.

Note: The Revisor of Statutes has pursuant to section 49-705 omitted sections 66-825 to 66-841 because the Supreme Court in State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979), held such sections from LB 571, Laws 1979, to be unconstitutional.

66-835 Unconstitutional.

Note: The Revisor of Statutes has pursuant to section 49-705 omitted sections 66-825 to 66-841 because the Supreme Court in State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979), held such sections from LB 571, Laws 1979, to be unconstitutional.

66-836 Unconstitutional.

Note: The Revisor of Statutes has pursuant to section 49-705 omitted sections 66-825 to 66-841 because the Supreme Court in State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979), held such sections from LB 571, Laws 1979, to be unconstitutional.

66-837 Unconstitutional.

Note: The Revisor of Statutes has pursuant to section 49-705 omitted sections 66-825 to 66-841 because the Supreme Court in State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979), held such sections from LB 571, Laws 1979, to be unconstitutional.

66-838 Unconstitutional.

Note: The Revisor of Statutes has pursuant to section 49-705 omitted sections 66-825 to 66-841 because the Supreme Court in State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979), held such sections from LB 571, Laws 1979, to be unconstitutional.

66-839 Unconstitutional.

Note: The Revisor of Statutes has pursuant to section 49-705 omitted sections 66-825 to 66-841 because the Supreme Court in State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979), held such sections from LB 571, Laws 1979, to be unconstitutional.

66-840 Unconstitutional.

Note: The Revisor of Statutes has pursuant to section 49-705 omitted sections 66-825 to 66-841 because the Supreme Court in State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979), held such sections from LB 571, Laws 1979, to be unconstitutional.

66-841 Unconstitutional.

Note: The Revisor of Statutes has pursuant to section 49-705 omitted sections 66-825 to 66-841 because the Supreme Court in State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979), held such sections from LB 571, Laws 1979, to be unconstitutional.

ARTICLE 9

SOLAR ENERGY AND WIND ENERGY

Section	
66-901.	Legislative findings.
66-902.	Definitions; where found.
66-902.01.	Decommissioning security, defined.
66-903.	Solar energy, defined.
66-904.	Solar energy collector, defined.
66-905.	Solar energy system, defined.
66-906.	Passive solar energy system, defined.
66-907.	Repealed. Laws 2012, LB 828, § 22.
66-908.	Structure, defined.
66-909.	Solar agreement, defined.
66-909.01.	Wind energy, defined.
66-909.02.	Wind energy conversion system, defined.
66-909.03.	Repealed. Laws 2012, LB 828, § 22.
66-909.04.	Wind agreement, defined.
66-910.	Solar agreement; wind agreement; manner granted.
66-911.	Repealed. Laws 2012, LB 828, § 22.
66-911.01.	Solar agreement; wind agreement; land right or option to secure a land right; requirements.
66-912.	Solar agreement; wind agreement; how enforced.
66-912.01.	Solar agreement; wind agreement; initial term; limitation; termination.
66-912.02.	Interest in wind or solar resource; restriction on severance from surface estate.
66-913.	Counties or municipalities; zoning regulations, ordinances, and plans; considerations.
66-914.	Solar energy systems; wind energy conversion systems; restricted by regulation or ordinance; variance or exception; when granted.

66-901 Legislative findings.

The Legislature hereby finds and declares that the use of solar energy and wind energy in Nebraska: (1) Can help reduce the nation's reliance upon irreplaceable domestic and imported fossil fuels; (2) can reduce air and water pollution resulting from the use of conventional energy sources; (3) requires effective legislation and efficient administration of state and local programs to be of greatest value to its citizens; and (4) is of such importance to the public health, safety, and welfare that the state should take appropriate action to encourage its use.

As the use of solar energy and wind energy devices increases, the possibility of future shading and obstruction of such devices by structures or vegetation will also increase. The Legislature therefor declares that the purpose of sections 66-901 to 66-914 is to promote the public health, safety, and welfare by protecting access to solar energy and wind energy as provided in sections 66-901 to 66-914.

Source: Laws 1979, LB 353, § 1; Laws 1997, LB 140, § 1; Laws 2012, LB828, § 1.

66-902 Definitions; where found.

For purposes of sections 66-901 to 66-914, unless the context otherwise requires, the definitions found in sections 66-902.01 to 66-909.04 apply.

Source: Laws 1979, LB 353, § 2; Laws 1997, LB 140, § 2; Laws 2012, LB828, § 2.

66-902.01 Decommissioning security, defined.

Decommissioning security means a security instrument that is posted or given by a wind developer to a municipality or other governmental entity to ensure sufficient funding is available for removal of a wind energy conversion system and reclamation at the end of the useful life of such a system.

Source: Laws 2012, LB828, § 3.

66-903 Solar energy, defined.

Solar energy shall mean radiant energy, direct, diffuse, or reflected, received from the sun at wavelengths suitable for conversion into thermal, chemical, or electrical energy.

Source: Laws 1979, LB 353, § 3.

66-904 Solar energy collector, defined.

Solar energy collector shall mean a device, structure, or part of a device or structure which is used primarily to transform solar energy into thermal, chemical, or electrical energy. It includes any space or structural components specifically designed to retain heat derived from solar energy, any mechanism that converts wind energy into electrical energy, and any photosynthetic process specifically maintained to produce photosynthetic products.

Source: Laws 1979, LB 353, § 4.

66-905 Solar energy system, defined.

Solar energy system shall mean a complete design or assembly consisting of a solar energy collector, an energy storage facility when used, and components for the distribution of transformed energy to the extent that they cannot be used jointly with a conventional energy system. Passive solar energy systems are included in this definition but not to the extent that they fulfill other functions, such as structural or recreational.

Source: Laws 1979, LB 353, § 5.

66-906 Passive solar energy system, defined.

Passive solar energy system shall mean any space or structural components that are specifically designed to retain heat derived from solar energy, including ponds for evaporative cooling, and any moving parts that increase heat retention by the system.

Source: Laws 1979, LB 353, § 6.

66-907 Repealed. Laws 2012, LB 828, § 22.**66-908 Structure, defined.**

Structure shall mean anything constructed, installed, or portable that requires for normal use a location on a parcel of land. This includes any movable structure located on land which can be used either temporarily or permanently for housing, business, commercial, agricultural, or office purposes. It also includes fences, billboards, poles, pipelines, transmission lines, and advertising signs.

Source: Laws 1979, LB 353, § 8.

66-909 Solar agreement, defined.

Solar agreement shall mean a right, whether or not stated in the form of a restriction, easement, covenant, or condition, in any deed, will, or other instrument executed by any person for the purpose of insuring adequate access of a solar energy system to solar energy.

Source: Laws 1979, LB 353, § 9; Laws 2012, LB828, § 5.

66-909.01 Wind energy, defined.

Wind energy shall mean the use of wind to produce electricity through the use of a wind energy conversion system.

Source: Laws 1997, LB 140, § 3.

66-909.02 Wind energy conversion system, defined.

Wind energy conversion system shall mean any device, supporting structure, mechanism, or series of mechanisms that uses wind for the production of electricity or a mechanical application.

Source: Laws 1997, LB 140, § 4.

66-909.03 Repealed. Laws 2012, LB 828, § 22.**66-909.04 Wind agreement, defined.**

Wind agreement means a right, whether or not stated in the form of a restriction, easement, covenant, or condition, in any deed, wind easement, wind option, lease, or lease option securing land for the study or production of wind-generated energy or any other instrument executed by or on behalf of any owner of land or air space for the purpose of allowing another party to study the potential for or to develop a wind energy conversion system on such land or in such air space.

Source: Laws 2012, LB828, § 4.

66-910 Solar agreement; wind agreement; manner granted.

Any property owner may grant a solar agreement or wind agreement in the same manner and with the same effect as a conveyance of any other interest in real property.

Source: Laws 1979, LB 353, § 10; Laws 1997, LB 140, § 6; Laws 2012, LB828, § 6.

66-911 Repealed. Laws 2012, LB 828, § 22.**66-911.01 Solar agreement; wind agreement; land right or option to secure a land right; requirements.**

An instrument creating a land right or an option to secure a land right in real property or the vertical space above real property for a solar agreement or a wind agreement shall be created in writing, and the instrument, or an abstract, shall be filed, duly recorded, and indexed in the office of the register of deeds of the county in which the real property subject to the instrument is located. The instrument shall include, but the contents are not limited to:

- (1) The names of the parties;

- (2) A legal description of the real property involved;
- (3) The nature of the interest created;
- (4) The consideration paid for the transfer;
- (5) A description of the improvements the developer intends to make on the real property, including, but not limited to: Roads; transmission lines; substations; wind turbines; and meteorological towers;
- (6) A description of any decommissioning security or local requirements related to decommissioning; and
- (7) The terms or conditions, if any, under which the interest may be revised or terminated.

An abstract under this section need not include the items described in subdivisions (4) through (7) of this section.

Source: Laws 1997, LB 140, § 8; Laws 2009, LB568, § 5; Laws 2012, LB828, § 7.

66-912 Solar agreement; wind agreement; how enforced.

A solar agreement or wind agreement may be enforced by injunction or proceedings in equity or other civil action.

Source: Laws 1979, LB 353, § 12; Laws 1997, LB 140, § 9; Laws 2012, LB828, § 8.

66-912.01 Solar agreement; wind agreement; initial term; limitation; termination.

A solar agreement or wind agreement shall run with the land benefited and burdened and shall terminate upon the conditions stated in the solar agreement or wind agreement. The initial term of a solar agreement or wind agreement shall not exceed forty years, except that the parties to a solar agreement or wind agreement may extend or renew the initial term by mutual written agreement. A wind agreement shall terminate if development of a wind energy conversion system has not commenced within ten years after the effective date of the wind agreement, except that this period may be extended by mutual agreement of the parties to the wind agreement.

Source: Laws 2012, LB828, § 9.

66-912.02 Interest in wind or solar resource; restriction on severance from surface estate.

No interest in any wind or solar resource located on a tract of land and associated with the production or potential production of wind or solar energy on the tract of land may be severed from the surface estate.

Source: Laws 2012, LB828, § 10.

66-913 Counties or municipalities; zoning regulations, ordinances, and plans; considerations.

All counties or municipalities having zoning or subdivision jurisdiction are hereby authorized to include considerations for the encouragement of solar energy and wind energy use and the protection of access to solar energy and wind energy in all applicable zoning regulations or ordinances and comprehensive development plans. Such considerations may include, but not be limited to,

regulation of height, location, setback, and use of structures, the height and location of vegetation with respect to property boundary lines, the type and location of energy systems or their components, and the use of districts to encourage the use of solar energy systems and wind energy conversion systems and protect access to solar energy and wind energy. Comprehensive development plans may contain an element for protection and development of solar energy and wind energy access which will promote energy conservation and ensure coordination of solar energy and wind energy use with conventional energy use.

Source: Laws 1979, LB 353, § 13; Laws 1997, LB 140, § 10.

66-914 Solar energy systems; wind energy conversion systems; restricted by regulation or ordinance; variance or exception; when granted.

When the application of any zoning or subdivision regulation or ordinance would prevent or unduly restrict the use of solar energy systems or wind energy conversion systems, the governing body of the county or municipality having zoning or subdivision jurisdiction is authorized to grant a variance or exception from the strict application thereof so as to relieve such restriction and protect access to solar energy or wind energy if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of such regulation or ordinance.

Source: Laws 1979, LB 353, § 14; Laws 1997, LB 140, § 11.

ARTICLE 10

ENERGY CONSERVATION

(a) UTILITY LOANS

Section

- 66-1001. Energy conservation and efficiency; legislative findings.
- 66-1002. Definitions, sections found.
- 66-1003. Customer, defined.
- 66-1004. Energy conservation measure, defined.
- 66-1005. Loan, defined.
- 66-1006. Utility, defined.
- 66-1007. Utility; initiate and administer loans.
- 66-1008. Utility; loans; restrictions.
- 66-1009. Loan; repayment plan; default; use; lien; limitation; State Energy Office; duties.
- 66-1010. Utilities; supplemental powers.
- 66-1011. Loan; use; limitation.

(b) LOW-INCOME HOME ENERGY CONSERVATION ACT

- 66-1012. Repealed. Laws 2017, LB217, § 40.
- 66-1013. Repealed. Laws 2017, LB217, § 40.
- 66-1014. Repealed. Laws 2017, LB217, § 40.
- 66-1015. Repealed. Laws 2017, LB217, § 40.
- 66-1016. Repealed. Laws 2017, LB217, § 40.
- 66-1017. Repealed. Laws 2017, LB217, § 40.
- 66-1018. Repealed. Laws 2017, LB217, § 40.
- 66-1019. Repealed. Laws 2017, LB217, § 40.
- 66-1019.01. Repealed. Laws 2017, LB217, § 40.

(c) ENERGY CONSERVATION IMPROVEMENT, TAX EXEMPTION

- 66-1020. Repealed. Laws 1991, LB 11, § 2.
- 66-1021. Repealed. Laws 1991, LB 11, § 2.
- 66-1022. Repealed. Laws 1991, LB 11, § 2.

Section	
66-1023.	Repealed. Laws 1991, LB 11, § 2.
66-1024.	Repealed. Laws 1991, LB 11, § 2.
66-1025.	Repealed. Laws 1991, LB 11, § 2.
66-1026.	Repealed. Laws 1991, LB 11, § 2.
66-1027.	Repealed. Laws 1991, LB 11, § 2.
66-1028.	Repealed. Laws 1991, LB 11, § 2.
	(d) RENEWABLE ENERGY DEVELOPMENT, TAX CREDITS
66-1029.	Repealed. Laws 1993, LB 5, § 6.
66-1030.	Repealed. Laws 1993, LB 5, § 6.
66-1031.	Repealed. Laws 1993, LB 5, § 6.
66-1032.	Repealed. Laws 1993, LB 5, § 6.
66-1033.	Repealed. Laws 1993, LB 5, § 6.
66-1034.	Repealed. Laws 1993, LB 5, § 6.
66-1035.	Repealed. Laws 1993, LB 5, § 6.
66-1036.	Repealed. Laws 1993, LB 5, § 6.
66-1037.	Repealed. Laws 1993, LB 5, § 6.
66-1038.	Repealed. Laws 1993, LB 5, § 6.
66-1039.	Repealed. Laws 1993, LB 5, § 6.
66-1040.	Repealed. Laws 1993, LB 5, § 6.
66-1041.	Repealed. Laws 1993, LB 5, § 6.
66-1042.	Repealed. Laws 1993, LB 5, § 6.
66-1043.	Repealed. Laws 1993, LB 5, § 6.
66-1044.	Repealed. Laws 1993, LB 5, § 6.
66-1045.	Repealed. Laws 1993, LB 5, § 6.
66-1046.	Repealed. Laws 1993, LB 5, § 6.
66-1046.01.	Repealed. Laws 1993, LB 5, § 6.
66-1047.	Repealed. Laws 1993, LB 5, § 6.
66-1048.	Repealed. Laws 1993, LB 5, § 6.
66-1049.	Repealed. Laws 1993, LB 5, § 6.
66-1050.	Repealed. Laws 1993, LB 5, § 6.
66-1051.	Repealed. Laws 1993, LB 5, § 6.
66-1052.	Repealed. Laws 1993, LB 5, § 6.
66-1053.	Repealed. Laws 1993, LB 5, § 6.
66-1054.	Repealed. Laws 1993, LB 5, § 6.
66-1055.	Repealed. Laws 1993, LB 5, § 6.
	(e) GEOTHERMAL ENERGY UTILIZATION GRANT
66-1056.	Repealed. Laws 1991, LB 11, § 2.
66-1057.	Repealed. Laws 1991, LB 11, § 2.
66-1058.	Repealed. Laws 1991, LB 11, § 2.
66-1059.	Repealed. Laws 1991, LB 11, § 2.
	(f) INTEGRATED RESOURCE PLANNING
66-1060.	Legislative findings.
66-1061.	Section and repeal of section, how construed.
	(g) ENERGY FINANCING CONTRACTS
66-1062.	Terms, defined.
66-1063.	Governmental unit; energy financing contracts; authorized.
66-1064.	Governmental unit; powers and duties.
66-1065.	Energy financing contract; contents; energy service company; bond requirements.
66-1066.	Energy financing contract; terms.

(a) UTILITY LOANS

66-1001 Energy conservation and efficiency; legislative findings.

The Legislature finds, for purposes of sections 66-1001 to 66-1011, that:

(1) Our present dependence on foreign oil has created a danger to the public health and welfare and a need for a dependable source of energy;

(2) Conservation is one of the most prudent means of meeting our need for a dependable source of energy;

(3) There is an urgent and continuing need for every person and business in the state to conserve energy;

(4) There is an urgent and continuing need for capital to provide the initial investment necessary to make homes and other buildings more energy efficient;

(5) It would be prudent for our publicly owned electric utilities to supply this needed capital in order to avoid the greater costs of constructing new generation facilities; and

(6) Involvement by our publicly owned electric utilities in energy conservation programs serves a public purpose.

Source: Laws 1980, LB 954, § 14.

66-1002 Definitions, sections found.

For purposes of sections 66-1001 to 66-1011, unless the context otherwise requires, the definitions found in sections 66-1003 to 66-1006 shall be used.

Source: Laws 1980, LB 954, § 15.

66-1003 Customer, defined.

Customer shall mean the owner or renter of any residential, agricultural, or commercial building in the state for which there is purchased, from a utility, electricity to be used for either space heating or cooling or the heating of water for domestic purposes. Owners of mobile homes may be included in this definition at the option of the utility involved.

Source: Laws 1980, LB 954, § 16.

66-1004 Energy conservation measure, defined.

Energy conservation measure shall mean installing or using any:

(1) Caulking or weatherstripping of doors or windows;

(2) Furnace efficiency modifications involving electric service;

(3) Clock thermostats;

(4) Water heater insulation or modification;

(5) Ceiling, attic, wall, or floor insulation;

(6) Storm windows or doors, multiglazed windows or doors, or heat absorbing or reflective glazed window and door material;

(7) Devices which control demand of appliances and aid load management;

(8) Devices to utilize solar energy, biomass, or wind power for any energy conservation purpose, including heating of water and space heating or cooling, which have been identified by the State Energy Office as an energy conservation measure for the purposes of sections 66-1001 to 66-1011;

(9) High-efficiency lighting and motors;

(10) Devices which are designed to increase energy efficiency, the utilization of renewable resources, or both; and

(11) Such other conservation measures as the State Energy Office shall identify.

Source: Laws 1980, LB 954, § 17; Laws 1982, LB 799, § 2; Laws 1994, LB 941, § 1.

66-1005 Loan, defined.

Loan shall mean an extension of credit by a utility from its own capital or from capital raised by the Nebraska Investment Finance Authority pursuant to sections 58-201 to 58-272 to or for the benefit of a customer solely for the purchase or installation of energy conservation measures with repayment to be made through the utility's periodic billing system.

Source: Laws 1980, LB 954, § 18; Laws 1982, LB 799, § 3; Laws 1983, LB 626, § 76.

66-1006 Utility, defined.

Utility shall mean a publicly owned electrical utility providing either wholesale or retail service within the state.

Source: Laws 1980, LB 954, § 19.

66-1007 Utility; initiate and administer loans.

A utility may make loans pursuant to sections 66-1001 to 66-1011 and may contract with banks, financial experts, and such other advisors as may be necessary in its judgment to initiate and administer the loans.

Source: Laws 1980, LB 954, § 20.

66-1008 Utility; loans; restrictions.

A utility making a loan pursuant to section 66-1007 shall not:

- (1) Operate an energy conservation plan for profit; or
- (2) Supply or install energy conservation measures under its plan or own, either wholly or partially, any subsidiary involved in supplying or installing energy conservation measures under its plan.

Source: Laws 1980, LB 954, § 21; Laws 1994, LB 941, § 2.

66-1009 Loan; repayment plan; default; use; lien; limitation; State Energy Office; duties.

(1) A customer borrowing from a utility under a plan adopted pursuant to sections 66-1001 to 66-1011 shall be allowed to contract with the utility for a repayment plan and shall be offered a repayment period of not less than three years and not more than twenty years.

(2) Upon default on a loan by a customer, after expending reasonable efforts to collect, a utility may treat the entire unpaid contract amount as due, but services to a residential, agricultural, or commercial customer may not be terminated as a result of such default. Default occurs when any amount due a utility under a plan adopted pursuant to sections 66-1001 to 66-1011, 70-625, 70-704, 81-161, 81-1602, 81-1606 to 81-1626, and 84-162 to 84-167 is not paid within sixty days of the due date.

(3) Any customer obtaining a loan pursuant to section 66-1007 shall only use the funds to accomplish the purposes agreed upon at the time of the loan. If the

borrower of any funds obtained pursuant to sections 66-1001 to 66-1011 uses such funds in a manner or for a purpose not authorized by this section, the total amount of the loan shall immediately become due and payable.

(4) Any amount due a utility on a loan pursuant to sections 66-1001 to 66-1011 which is not paid in full within sixty days of the due date shall become a lien as provided in this section on the real property concerned as to the full unpaid balance. No lien under this section shall be valid unless (a) the loan was signed by the party or parties shown on the indexes of the register of deeds to be the owners of record of such real property on the date of the loan and (b) the lien is filed not more than four months after the date of default, in the same office and in the same manner as mortgages in the county in which the real property is located. Such lien shall take effect and be in force from and after the time of delivering the same to the register of deeds for recording, and not before, as to all creditors and subsequent purchasers in good faith without notice, and such lien shall be adjudged void as to all such creditors and subsequent purchasers without notice whose deeds, mortgages, or other instruments shall be first recorded, except that such lien shall be valid between the parties. A publicly owned utility shall not maintain possession of any property which it may acquire pursuant to a lien authorized by this section for a period of time longer than is reasonably necessary to dispose of such property.

(5) Any loan made under a plan adopted pursuant to sections 66-1001 to 66-1011 shall not exceed fifteen thousand dollars, subject to any existing limitations under federal law. Any loan to be made by a utility which exceeds ten thousand dollars shall only be made in participation with a bank pursuant to a contract. The utility and the participating bank shall determine the terms and conditions of the contract.

(6) The State Energy Office may adopt and promulgate rules and regulations to carry out sections 66-1001 to 66-1011.

Source: Laws 1980, LB 954, § 22; Laws 1982, LB 799, § 4; Laws 1983, LB 626, § 77; Laws 1993, LB 479, § 1; Laws 1994, LB 941, § 3.

66-1010 Utilities; supplemental powers.

The powers granted under sections 66-1001 to 66-1011 to public power districts, municipal electric utilities, rural power districts, and electric cooperative corporations shall be supplemental to those powers granted in Chapter 18 or 70.

Source: Laws 1980, LB 954, § 23.

66-1011 Loan; use; limitation.

Any customer obtaining a loan pursuant to sections 66-1001 to 66-1011 shall only use the funds to accomplish the purposes agreed upon at the time of the loan. This section shall not be construed to prohibit an owner or renter from providing services himself or herself to accomplish the agreed-upon purposes. If the borrower of any funds obtained pursuant to sections 66-1001 to 66-1011 uses such funds in a manner or for a purpose not authorized by this section, the total amount of the loan shall immediately become due and payable.

Source: Laws 1980, LB 954, § 24.

(b) LOW-INCOME HOME ENERGY CONSERVATION ACT

- 66-1012 Repealed. Laws 2017, LB217, § 40.
- 66-1013 Repealed. Laws 2017, LB217, § 40.
- 66-1014 Repealed. Laws 2017, LB217, § 40.
- 66-1015 Repealed. Laws 2017, LB217, § 40.
- 66-1016 Repealed. Laws 2017, LB217, § 40.
- 66-1017 Repealed. Laws 2017, LB217, § 40.
- 66-1018 Repealed. Laws 2017, LB217, § 40.
- 66-1019 Repealed. Laws 2017, LB217, § 40.
- 66-1019.01 Repealed. Laws 2017, LB217, § 40.

(c) ENERGY CONSERVATION IMPROVEMENT, TAX EXEMPTION

- 66-1020 Repealed. Laws 1991, LB 11, § 2.
- 66-1021 Repealed. Laws 1991, LB 11, § 2.
- 66-1022 Repealed. Laws 1991, LB 11, § 2.
- 66-1023 Repealed. Laws 1991, LB 11, § 2.
- 66-1024 Repealed. Laws 1991, LB 11, § 2.
- 66-1025 Repealed. Laws 1991, LB 11, § 2.
- 66-1026 Repealed. Laws 1991, LB 11, § 2.
- 66-1027 Repealed. Laws 1991, LB 11, § 2.
- 66-1028 Repealed. Laws 1991, LB 11, § 2.

(d) RENEWABLE ENERGY DEVELOPMENT, TAX CREDITS

- 66-1029 Repealed. Laws 1993, LB 5, § 6.
- 66-1030 Repealed. Laws 1993, LB 5, § 6.
- 66-1031 Repealed. Laws 1993, LB 5, § 6.
- 66-1032 Repealed. Laws 1993, LB 5, § 6.
- 66-1033 Repealed. Laws 1993, LB 5, § 6.
- 66-1034 Repealed. Laws 1993, LB 5, § 6.
- 66-1035 Repealed. Laws 1993, LB 5, § 6.
- 66-1036 Repealed. Laws 1993, LB 5, § 6.
- 66-1037 Repealed. Laws 1993, LB 5, § 6.

- 66-1038 Repealed. Laws 1993, LB 5, § 6.**
- 66-1039 Repealed. Laws 1993, LB 5, § 6.**
- 66-1040 Repealed. Laws 1993, LB 5, § 6.**
- 66-1041 Repealed. Laws 1993, LB 5, § 6.**
- 66-1042 Repealed. Laws 1993, LB 5, § 6.**
- 66-1043 Repealed. Laws 1993, LB 5, § 6.**
- 66-1044 Repealed. Laws 1993, LB 5, § 6.**
- 66-1045 Repealed. Laws 1993, LB 5, § 6.**
- 66-1046 Repealed. Laws 1993, LB 5, § 6.**
- 66-1046.01 Repealed. Laws 1993, LB 5, § 6.**
- 66-1047 Repealed. Laws 1993, LB 5, § 6.**
- 66-1048 Repealed. Laws 1993, LB 5, § 6.**
- 66-1049 Repealed. Laws 1993, LB 5, § 6.**
- 66-1050 Repealed. Laws 1993, LB 5, § 6.**
- 66-1051 Repealed. Laws 1993, LB 5, § 6.**
- 66-1052 Repealed. Laws 1993, LB 5, § 6.**
- 66-1053 Repealed. Laws 1993, LB 5, § 6.**
- 66-1054 Repealed. Laws 1993, LB 5, § 6.**
- 66-1055 Repealed. Laws 1993, LB 5, § 6.**

(e) GEOTHERMAL ENERGY UTILIZATION GRANT

- 66-1056 Repealed. Laws 1991, LB 11, § 2.**
- 66-1057 Repealed. Laws 1991, LB 11, § 2.**
- 66-1058 Repealed. Laws 1991, LB 11, § 2.**
- 66-1059 Repealed. Laws 1991, LB 11, § 2.**

(f) INTEGRATED RESOURCE PLANNING

66-1060 Legislative findings.

(1) The Legislature finds that it is in the public interest to support the development of least cost energy sources, including support for research, development, and the prudent use of renewable and nonrenewable supply-side technologies. The Legislature further finds that it is in the public interest to encourage energy efficiency and the use of indigenous energy sources. Consistent with this policy, the public utilities in Nebraska shall practice integrated resource planning and include least cost options when evaluating alternatives for providing energy supply and managing energy demand in Nebraska.

(2) For purposes of this section:

(a) Integrated resource planning means a planning process for new energy resources that evaluates the full range of alternatives, including new generating capacity, power purchases, energy conservation and efficiency, cogeneration and district heating and cooling applications, and renewable energy resources, in order to provide adequate and reliable service to electric customers at the lowest system cost. The process shall take into account necessary features for system operation, such as diversity, reliability, dispatchability, and other factors of risk, shall take into account the ability to verify energy savings achieved through energy conservation and efficiency and the projected durability of such savings measured over time, and shall treat demand and supply resources on a consistent and integrated basis; and

(b) Least cost or least cost option means providing reliable electric services to electric customers which will, to the extent practicable, minimize life-cycle system costs, including adverse environmental effects, of providing the services. To the extent practicable, energy efficiency and renewable resources may be given priority in any least cost planning.

Source: Laws 1995, LB 120, § 1.

66-1061 Section and repeal of section, how construed.

Section 66-1060 and the repeal of section 70-627.01 shall not be construed to affect the operating authority of any electric generation facility owned or operated by any Nebraska electric utility on September 9, 1995.

Source: Laws 1995, LB 120, § 2.

(g) ENERGY FINANCING CONTRACTS

66-1062 Terms, defined.

For purposes of sections 66-1062 to 66-1066:

(1) Energy conservation measure means a training, service, or operations program, facility alteration, or capital equipment acquisition designed to reduce wastewater or energy, utility, or water consumption, enhance revenue, or reduce operating or capital costs. Energy conservation measure includes:

- (a) Repair or renovation of heating, ventilation, and air conditioning systems;
- (b) Installation or repair of automated or computerized energy control systems;
- (c) Replacement or modification of lighting fixtures;
- (d) Insulation of a building structure or systems within that structure;
- (e) Installation of energy recovery systems;
- (f) Installation of cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;
- (g) Replacement, weatherstripping, caulking, or other insulation of windows or doors;
- (h) Meter replacement, installation, or modification or installation of automated meter reading systems;

(i) Replacement or installation of energy or water conservation equipment or improvements thereto, or the substitution of non-water-using fixtures, appliances, or equipment; or

(j) Any other measure designed to reduce wastewater or energy, utility, or water consumption, enhance revenue, or reduce operating or capital costs;

(2) Energy financing contract means an agreement between an energy service company and a governmental unit for the implementation of one or more energy conservation measures in an existing facility in order to reduce wastewater or energy, utility, or water consumption, enhance revenue, or reduce operating or capital costs. Energy financing contract includes, but is not limited to, a performance contract, shared-savings contract, guaranteed contract, and lease-purchase contract;

(3) Energy service company means a person or business experienced in the implementation and installation of energy conservation measures; and

(4) Governmental unit means a school district, community college area, village, city, county, or department or agency of the State of Nebraska.

Source: Laws 1998, LB 1129, § 9; Laws 1999, LB 236, § 1; Laws 2016, LB881, § 1.

66-1063 Governmental unit; energy financing contracts; authorized.

Notwithstanding the procedures for public lettings in sections 73-101 to 73-106 or any other statute of the State of Nebraska relating to the letting of bids by a governmental unit, a governmental unit may enter into an energy financing contract with an energy service company pursuant to sections 66-1062 to 66-1066.

Source: Laws 1998, LB 1129, § 10.

66-1064 Governmental unit; powers and duties.

(1) Prior to entering into an energy financing contract, a governmental unit shall obtain a written opinion from a professional engineer licensed in the State of Nebraska whose interests are independent from the financial savings or other revenue enhancement outcomes of the contract. The opinion shall contain a review of recommendations proposed by an energy service company pertaining to energy conservation measures designed to reduce energy or other utility consumption or to achieve operational or capital savings or revenue enhancement for the governmental unit.

(2) At least fourteen days prior to entering into an energy financing contract, a governmental unit shall furnish public notice of its intention to enter into such contract, the general nature of the proposed work being considered under the contract, and the name and telephone number of a person to be contacted by any energy service company interested in submitting a proposal to contract for such work. The governmental unit shall also directly solicit requests for qualifications from at least three energy service companies relating to the proposed contract.

(3) Upon receiving responses to its request for qualifications pursuant to subsection (2) of this section, the governmental unit may select the most qualified energy service company based on the company's experience, technical expertise, and financial arrangements, the overall benefits to the governmental unit, and other factors determined by the governmental unit to be relevant and

appropriate. The governmental unit may thereafter negotiate and enter into an energy financing contract pursuant to section 66-1065 with the company selected based on the criteria established by the governmental unit.

Source: Laws 1998, LB 1129, § 11; Laws 2016, LB881, § 2.

66-1065 Energy financing contract; contents; energy service company; bond requirements.

(1) Any energy financing contract entered into by a governmental unit shall:

(a) Detail the responsibilities of a Nebraska-licensed professional engineer in the design, installation, and commissioning of the energy conservation measures selected by the governmental unit. Any design shall conform to all statutes of the State of Nebraska pertaining to engineering design and public health, safety, and welfare;

(b) Set forth the calculated energy, utility, wastewater, or water cost savings or revenue enhancements, if applicable, during the contract period attributable to the energy conservation measures to be installed by the energy service company. Operational or capital savings or revenue enhancements may be included in the total savings amount, not guaranteed, but approved by the governmental unit;

(c) Estimate the useful life of each of the selected energy conservation measures;

(d) Provide that, except for obligations on termination of the contract prior to its expiration, payments on the contract are to be made over time, within a period not to exceed thirty years after the date of the installation of the energy conservation measures provided for under the contract;

(e) Provide that the calculated savings for each year of the contract period will meet or exceed all payments to be made during each year of the contract;

(f) Disclose the effective interest rate being charged by the energy service company; and

(g) In the case of a guaranteed savings contract, set forth the method by which savings will be calculated and a method of resolving any dispute in the amount of the savings. The energy service company shall have total responsibility for the savings guarantee for each guaranteed savings contract. Surplus savings realized during any year of the guaranteed savings contract shall be applied to future years' savings results.

(2) An energy service company entering into an energy financing contract shall provide a performance bond to the governmental unit in an amount equal to one hundred percent of the total cost of the implementation, installation, or construction of the energy conservation measures under the applicable energy financing contract to assure the company's faithful performance. The energy service company shall also supply a guarantee bond equal to one hundred percent of the guaranteed energy savings for the entire term of the contract.

Source: Laws 1998, LB 1129, § 12; Laws 2008, LB747, § 1; Laws 2016, LB881, § 3.

66-1066 Energy financing contract; terms.

An energy financing contract may extend beyond the fiscal year in which it becomes effective and shall allow the governmental unit to cancel the contract

for the nonappropriation of funds. An obligation created by an energy financing contract entered into or indebtedness incurred pursuant to this section shall not constitute or give rise to an indebtedness within the meaning of any constitutional, statutory, or board debt limitation.

Source: Laws 1998, LB 1129, § 13.

**ARTICLE 11
GEOTHERMAL RESOURCES**

Section	
66-1101.	Legislative findings.
66-1102.	Terms, defined.
66-1103.	Severance of mineral estate; right to develop geothermal resource; attaches; exception.
66-1104.	Owner of mineral estate; right of entry; lease of state-owned geothermal resources.
66-1105.	Geothermal resource development; conditions; permit; Department of Natural Resources; adopt rules and regulations.
66-1106.	Development and production of geothermal resources; provisions applicable.

66-1101 Legislative findings.

The Legislature finds it to be in the public interest of the state and its citizens to promote the efficient development and prevent the waste of geothermal resources. Geothermal energy is an indigenous, renewable resource the development of which will benefit local economies. The Legislature further finds and declares that a permit system is necessary to protect Nebraska’s ground and surface water resources and existing water users, particularly where the development of geothermal energy requires the utilization of geothermal resources at a location other than the well site.

Source: Laws 1982, LB 708, § 1.

66-1102 Terms, defined.

As used in sections 66-1101 to 66-1106, unless the context otherwise requires:

- (1) Geothermal resources shall mean (a) the natural heat of the earth and the energy produced by that heat, including pressure, and (b) the material medium containing that energy;
- (2) Geothermal fluids shall mean the naturally present ground water in geothermal occurrences;
- (3) Geothermal occurrence shall mean an underground geologic formation at temperatures higher than the normal gradient; and
- (4) Material medium shall mean geothermal fluids or other substances injected into a geothermal occurrence by which geothermal energy is transported to the surface.

Source: Laws 1982, LB 708, § 2.

66-1103 Severance of mineral estate; right to develop geothermal resource; attaches; exception.

When the subsurface or mineral estate has been severed from the overlying surface estate, ownership of the right to develop and produce geothermal resources shall derive from the subsurface or mineral estate, except that no

such right shall attach to subsurface or mineral estates granted prior to July 17, 1982, unless the document conveying the subsurface or mineral estate specifically granted the right to develop and produce geothermal resources.

Source: Laws 1982, LB 708, § 3.

66-1104 Owner of mineral estate; right of entry; lease of state-owned geothermal resources.

(1) When the subsurface or mineral estate in land has been severed from the overlying surface estate, the owner of the subsurface or mineral estate shall have the right to enter upon the overlying surface estate at reasonable times and in a reasonable manner to prospect for, produce, and transport geothermal resources. Fair and equitable compensation shall be paid to the owner of the overlying surface estate for the exercise of such right of entry. The right of entry granted in this section shall not include the right to construct surface facilities for onsite utilization of geothermal energy.

(2) The Board of Educational Lands and Funds shall have the authority to lease state-owned geothermal resources under the procedures contained in Chapter 72, article 3.

Source: Laws 1982, LB 708, § 4.

66-1105 Geothermal resource development; conditions; permit; Department of Natural Resources; adopt rules and regulations.

Any person who desires to withdraw ground water within the State of Nebraska for geothermal resource development shall, prior to commencing construction of any wells, obtain from the Director of Natural Resources a permit to authorize the withdrawal, transfer, and further use or reinjection of such ground water. The Department of Natural Resources shall adopt and promulgate rules and regulations governing the issuance of such permits, consistent with sections 66-1101 to 66-1106 and with Chapter 46, article 6. Such rules and regulations shall provide for consultation with the Department of Environmental Quality pursuant to the issuance of such permits and shall be compatible with rules and regulations adopted and promulgated by the Department of Environmental Quality under the Environmental Protection Act. Any geothermal fluids produced incident to the development and production of geothermal resources shall be reinjected into the same geologic formation from which they were extracted in substantially the same volume and substantially the same or higher quality as when extracted unless the permit issued in accordance with this section authorizes further uses or processing other than those incident to reinjection.

Source: Laws 1982, LB 708, § 5; Laws 1993, LB 3, § 37; Laws 2000, LB 900, § 245.

Cross References

Environmental Protection Act, see section 81-1532.

66-1106 Development and production of geothermal resources; provisions applicable.

The development and production of geothermal resources shall be subject to Chapter 46, article 6, and the Environmental Protection Act and any rules and regulations adopted thereunder.

Source: Laws 1982, LB 708, § 6.

Cross References

Environmental Protection Act, see section 81-1532.

ARTICLE 12

PETROLEUM PRODUCTS

(a) LABELING OF DISPENSERS

Section

- 66-1201. Repealed. Laws 1986, LB 736, § 1.
- 66-1202. Repealed. Laws 1986, LB 736, § 1.
- 66-1203. Repealed. Laws 1986, LB 736, § 1.
- 66-1204. Repealed. Laws 1986, LB 736, § 1.
- 66-1205. Repealed. Laws 1986, LB 736, § 1.
- 66-1206. Repealed. Laws 1986, LB 736, § 1.
- 66-1207. Repealed. Laws 1986, LB 736, § 1.
- 66-1208. Repealed. Laws 1986, LB 736, § 1.
- 66-1209. Repealed. Laws 1986, LB 736, § 1.
- 66-1210. Repealed. Laws 1986, LB 736, § 1.
- 66-1211. Repealed. Laws 1986, LB 736, § 1.
- 66-1212. Repealed. Laws 1986, LB 736, § 1.
- 66-1213. Repealed. Laws 1986, LB 736, § 1.
- 66-1214. Motor fuel dispensers; label requirements; penalty.

(b) FUEL SAMPLING

- 66-1215. Repealed. Laws 1995, LB 182, § 73.
- 66-1216. Repealed. Laws 1995, LB 182, § 73.
- 66-1217. Repealed. Laws 1995, LB 182, § 73.
- 66-1218. Repealed. Laws 1995, LB 182, § 73.
- 66-1219. Repealed. Laws 1995, LB 182, § 73.
- 66-1220. Repealed. Laws 1995, LB 182, § 73.
- 66-1221. Repealed. Laws 1995, LB 182, § 73.
- 66-1222. Repealed. Laws 1995, LB 182, § 73.
- 66-1223. Repealed. Laws 1995, LB 182, § 73.
- 66-1224. Repealed. Laws 1995, LB 182, § 73.

(c) REFORMULATED GASOLINE

- 66-1225. Reformulated gasoline; requirements for sale.

(d) AUTOMOTIVE SPARK IGNITION ENGINE FUELS

- 66-1226. Standard Specifications for Automotive Spark Ignition Engine Fuels; adoption by reference; sale of fuels; requirements; violations; penalties.

(e) METHYL TERTIARY BUTYL ETHER (MTBE)

- 66-1227. Methyl tertiary butyl ether; restriction.

(a) LABELING OF DISPENSERS

66-1201 Repealed. Laws 1986, LB 736, § 1.

66-1202 Repealed. Laws 1986, LB 736, § 1.

66-1203 Repealed. Laws 1986, LB 736, § 1.

66-1204 Repealed. Laws 1986, LB 736, § 1.

66-1205 Repealed. Laws 1986, LB 736, § 1.

66-1206 Repealed. Laws 1986, LB 736, § 1.

66-1207 Repealed. Laws 1986, LB 736, § 1.

66-1208 Repealed. Laws 1986, LB 736, § 1.

66-1209 Repealed. Laws 1986, LB 736, § 1.

66-1210 Repealed. Laws 1986, LB 736, § 1.

66-1211 Repealed. Laws 1986, LB 736, § 1.

66-1212 Repealed. Laws 1986, LB 736, § 1.

66-1213 Repealed. Laws 1986, LB 736, § 1.

66-1214 Motor fuel dispensers; label requirements; penalty.

Commencing January 1, 1986, motor fuel dispensers shall be labeled on both faces with the product identity using the most descriptive terms commercially practicable. In addition, all alcohol-blended fuel dispensers shall have a label stating: With or containing ethanol, methanol, or ethanol and methanol or with similar wording if the motor fuel being dispensed contains one percent or more by volume of alcohol. Any person who owns or controls such a motor fuel dispenser and does not attach the notice required by this section shall be guilty of an infraction.

Source: Laws 1985, LB 346, § 6.

(b) FUEL SAMPLING

66-1215 Repealed. Laws 1995, LB 182, § 73.

66-1216 Repealed. Laws 1995, LB 182, § 73.

66-1217 Repealed. Laws 1995, LB 182, § 73.

66-1218 Repealed. Laws 1995, LB 182, § 73.

66-1219 Repealed. Laws 1995, LB 182, § 73.

66-1220 Repealed. Laws 1995, LB 182, § 73.

66-1221 Repealed. Laws 1995, LB 182, § 73.

66-1222 Repealed. Laws 1995, LB 182, § 73.

66-1223 Repealed. Laws 1995, LB 182, § 73.

66-1224 Repealed. Laws 1995, LB 182, § 73.

(c) REFORMULATED GASOLINE

66-1225 Reformulated gasoline; requirements for sale.

Reformulated gasoline which is sold after January 1, 1992, in ozone nonattainment areas of Nebraska as designated by the federal Environmental Protection Agency shall contain an oxygen content equal to or greater than three and one-tenth percent weight oxygen.

Source: Laws 1990, LB 1124, § 8; Laws 1991, LB 627, § 134.

(d) AUTOMOTIVE SPARK IGNITION ENGINE FUELS

66-1226 Standard Specifications for Automotive Spark Ignition Engine Fuels; adoption by reference; sale of fuels; requirements; violations; penalties.

(1) The Legislature hereby adopts by reference the American Society For Testing and Materials publication D4814-89 entitled Standard Specifications for Automotive Spark Ignition Engine Fuels. The Department of Agriculture shall file copies of such publication with the Secretary of State and Clerk of the Legislature.

(2) Commencing on January 1, 1992, all automotive spark ignition engine fuels sold in Nebraska shall meet the specification as found in the American Society For Testing and Materials publication D4814-89 entitled Standard Specifications for Automotive Spark Ignition Engine Fuels. Any person who violates this subsection shall be guilty of a Class I misdemeanor for the first such violation and a Class IV felony for all subsequent violations.

(3) For purposes of this section, automotive spark ignition engine fuels shall mean gasoline and its blends with oxygenates such as alcohol and ethers.

Source: Laws 1991, LB 627, § 145; Laws 1993, LB 440, § 16.

(e) METHYL TERTIARY BUTYL ETHER (MTBE)

66-1227 Methyl tertiary butyl ether; restriction.

On or after July 13, 2000, a retailer shall not offer for sale in this state any petroleum product that contains more than one percent of methyl tertiary butyl ether (MTBE) by volume. For purposes of this section, retailer has the same definition as in section 66-482.

Source: Laws 2000, LB 1234, § 17.

ARTICLE 13

ETHANOL

Section	
66-1301.	Transferred to section 66-1330.
66-1302.	Repealed. Laws 1993, LB 364, § 26.
66-1303.	Transferred to section 66-1333.
66-1304.	Repealed. Laws 1993, LB 364, § 26.
66-1305.	Repealed. Laws 1993, LB 364, § 26.
66-1306.	Repealed. Laws 1993, LB 364, § 26.
66-1307.	Repealed. Laws 1993, LB 364, § 26.
66-1307.01.	Repealed. Laws 1993, LB 364, § 26.
66-1307.02.	Repealed. Laws 1993, LB 364, § 26.
66-1308.	Repealed. Laws 1993, LB 364, § 26.
66-1309.	Repealed. Laws 1993, LB 364, § 26.
66-1310.	Repealed. Laws 1993, LB 364, § 26.
66-1311.	Repealed. Laws 1993, LB 364, § 26.
66-1312.	Repealed. Laws 1993, LB 364, § 26.
66-1313.	Repealed. Laws 1993, LB 364, § 26.
66-1314.	Repealed. Laws 1993, LB 364, § 26.
66-1315.	Transferred to section 66-1339.
66-1316.	Transferred to section 66-1340.
66-1317.	Repealed. Laws 1993, LB 364, § 26.
66-1318.	Repealed. Laws 1987, LB 279, § 15.
66-1319.	Repealed. Laws 1993, LB 364, § 26.
66-1320.	Repealed. Laws 1993, LB 364, § 26.
66-1321.	Repealed. Laws 1993, LB 364, § 26.

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- 66-1321.01. Transferred to section 66-1341.
 - 66-1322. Repealed. Laws 1993, LB 364, § 26.
 - 66-1323. Repealed. Laws 1993, LB 364, § 26.
 - 66-1324. Transferred to section 66-1342.
 - 66-1325. Transferred to section 66-1343.
 - 66-1326. Transferred to section 66-1344.
 - 66-1327. Transferred to section 66-1345.
 - 66-1328. Transferred to section 66-1346.
 - 66-1329. Transferred to section 66-1347.
 - 66-1330. Act, how cited.
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 - 66-1340. Board; accept property; powers.
 - 66-1341. Application; information confidential.
 - 66-1342. Repayment of loan; other funds; remittance.
 - 66-1343. Repealed. Laws 1999, LB 605, § 8.
 - 66-1344. Ethanol tax credits; conditions; limitations; Department of Revenue; powers and duties.
 - 66-1344.01. Ethanol tax credits; agreement required; contents.
 - 66-1345. Ethanol Production Incentive Cash Fund; created; use; investment; transfers; duties.
 - 66-1345.01. Repealed. Laws 2017, LB1, § 4.
 - 66-1345.02. Repealed. Laws 2017, LB1, § 4.
 - 66-1345.03. Repealed. Laws 2017, LB1, § 4.
 - 66-1345.04. Repealed. Laws 2017, LB1, § 4.
 - 66-1345.05. Funds received by the Department of Revenue; disposition.
 - 66-1346. Repealed. Laws 2004, LB 479, § 12.
 - 66-1347. Repealed. Laws 1999, LB 605, § 8.
 - 66-1348. Investment agreements; act; how construed.
 - 66-1349. Ethanol facility eligible for tax credits or incentives; employ residents.
 - 66-1350. Repealed. Laws 2004, LB 810, § 1; Laws 2004, LB 940, § 4.

66-1301 Transferred to section 66-1330.

66-1302 Repealed. Laws 1993, LB 364, § 26.

66-1303 Transferred to section 66-1333.

66-1304 Repealed. Laws 1993, LB 364, § 26.

66-1305 Repealed. Laws 1993, LB 364, § 26.

66-1306 Repealed. Laws 1993, LB 364, § 26.

66-1307 Repealed. Laws 1993, LB 364, § 26.

66-1307.01 Repealed. Laws 1993, LB 364, § 26.

66-1307.02 Repealed. Laws 1993, LB 364, § 26.

66-1308 Repealed. Laws 1993, LB 364, § 26.

66-1309 Repealed. Laws 1993, LB 364, § 26.

66-1310 Repealed. Laws 1993, LB 364, § 26.

66-1311 Repealed. Laws 1993, LB 364, § 26.

66-1312 Repealed. Laws 1993, LB 364, § 26.

66-1313 Repealed. Laws 1993, LB 364, § 26.

66-1314 Repealed. Laws 1993, LB 364, § 26.

66-1315 Transferred to section 66-1339.

66-1316 Transferred to section 66-1340.

66-1317 Repealed. Laws 1993, LB 364, § 26.

66-1318 Repealed. Laws 1987, LB 279, § 15.

66-1319 Repealed. Laws 1993, LB 364, § 26.

66-1320 Repealed. Laws 1993, LB 364, § 26.

66-1321 Repealed. Laws 1993, LB 364, § 26.

66-1321.01 Transferred to section 66-1341.

66-1322 Repealed. Laws 1993, LB 364, § 26.

66-1323 Repealed. Laws 1993, LB 364, § 26.

66-1324 Transferred to section 66-1342.

66-1325 Transferred to section 66-1343.

66-1326 Transferred to section 66-1344.

66-1327 Transferred to section 66-1345.

66-1328 Transferred to section 66-1346.

66-1329 Transferred to section 66-1347.

66-1330 Act, how cited.

Sections 66-1330 to 66-1348 shall be known and may be cited as the Ethanol Development Act.

Source: Laws 1986, LB 1230, § 1; Laws 1987, LB 279, § 1; Laws 1989, LB 587, § 1; Laws 1992, LB 754, § 1; R.S.Supp.,1992, § 66-1301; Laws 1993, LB 364, § 1; Laws 1995, LB 377, § 1; Laws 2001, LB 536, § 1; Laws 2004, LB 479, § 2.

66-1331 Legislative findings.

The Legislature finds that Nebraska should continue its existing programs to encourage processing, market development, promotion, distribution, and research on products derived from grain, ethanol, or ethanol components, coproducts, or byproducts to provide for:

(1) Expanded use of Nebraska agricultural products;

(2) Efficient and less-polluting energy sources and reserves which will make Nebraska less energy dependent, reduce atmospheric carbon monoxide levels, and retain Nebraska dollars in the Nebraska economy to achieve a multiplier effect thereby generating additional jobs and tax income to the state rather than the export of Nebraska dollars;

(3) Development of protein which will be more efficiently stored and marketed to foreign nations rather than the present method of simple export of unprocessed grain products;

(4) Alternative local outlets for Nebraska agricultural products which can be particularly utilized in times of depressed grain prices so as to give Nebraskans greater control of their crop marketing procedures rather than have crop marketing procedures too dependent upon federal agencies, major grain exporters, and foreign purchasers. Local outlets may include ethanol plants, agricultural production facilities, or facilities related to the processing, marketing, or distribution of ethanol or products derived from ethanol or ethanol components, coproducts, or byproducts;

(5) Cooperation with private industry to establish ethanol-related production facilities in Nebraska to create demand for agricultural products;

(6) Promotion and market development, in cooperation with private industry, of ethanol or products derived from ethanol or ethanol components, coproducts, or byproducts; and

(7) Sponsorship of research and development of industrial and commercial uses for agricultural ethanol and for byproducts resulting from the manufacturing of agricultural ethanol in order to enhance economic feasibility and marketing potential of such products and processes.

Source: Laws 1993, LB 364, § 2.

66-1332 Public policy.

It is hereby declared to be the public policy of the state that, in order to safeguard life, health, property, and public welfare of its citizens, the production, sale, and use of motor fuel and the pollution caused by certain components of motor fuel are matters affecting the public interest and that a statewide emphasis on the production and use of motor fuel containing agricultural ethyl alcohol as a substitute for polluting components is necessary for the reduction of pollution and will further serve as an incentive for the agricultural economy in this state. The Legislature further recognizes that a fuel crisis is pending in the nation and that the development of an additional source of fuel will provide an energy and environmental benefit to the citizens of this state and to the future economic growth of Nebraska.

Source: Laws 1993, LB 364, § 3.

66-1333 Terms, defined.

For purposes of the Ethanol Development Act, unless the context otherwise requires:

(1) Agricultural production facility or ethanol facility means a plant or facility related to the processing, marketing, or distribution of any products derived from grain components, coproducts, or byproducts;

(2) Board means the Nebraska Ethanol Board;

(3) Grain means wheat, corn, and grain sorghum;

(4) Name plate design capacity means the original designed capacity of an agricultural production facility. Capacity may be specified as bushels of grain ground or gallons of ethanol produced per year; and

(5) Related parties means any two or more individuals, firms, partnerships, limited liability companies, companies, agencies, associations, or corporations which are members of the same unitary group or are any persons who are considered to be related persons under the Internal Revenue Code.

Source: Laws 1986, LB 1230, § 3; Laws 1989, LB 587, § 3; Laws 1992, LB 754, § 2; R.S.Supp.,1992, § 66-1303; Laws 1993, LB 364, § 4; Laws 1995, LB 377, § 6; Laws 2004, LB 479, § 4; Laws 2017, LB1, § 1.

66-1334 Agricultural Alcohol Fuel Tax Fund; created; use; investment.

(1) The Agricultural Alcohol Fuel Tax Fund is hereby created. No part of the funds deposited in the fund or of federal funds or other funds solicited in conjunction with research or demonstration programs shall lapse to the General Fund. Transfers from the Agricultural Alcohol Fuel Tax Fund to the Ethanol Production Incentive Cash Fund may be made at the direction of the Legislature. In addition to such unexpended balance appropriation, there is hereby appropriated such amounts as are deposited in the Agricultural Alcohol Fuel Tax Fund in each year. The fund shall be administered by the board. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The fund shall be used for the following purposes:

(a) Establishment, with cooperation of private industry, of procedures and processes necessary to the manufacture and marketing of fuel containing agricultural ethyl alcohol;

(b) Establishment of procedures for entering blended fuel into the marketplace by private enterprise;

(c) Analysis of the marketing process and testing of marketing procedures to assure acceptance in the private marketplace of blended fuel and byproducts resulting from the manufacturing process;

(d) Cooperation with private industry to establish privately owned agricultural ethyl alcohol manufacturing plants in Nebraska to supply demand for blended fuel;

(e) Sponsoring research and development of industrial and commercial uses for agricultural ethyl alcohol and for byproducts resulting from the manufacturing process;

(f) Promotion of state and national air quality improvement programs and influencing federal legislation that requires or encourages the use of fuels oxygenated by the inclusion of agricultural ethyl alcohol or its derivatives;

(g) Promotion of the use of renewable agricultural ethyl alcohol as a partial replacement for imported oil and for the energy and economic security of the nation;

(h) Participation in development and passage of national legislation dealing with research, development, and promotion of United States production of fuels

oxygenated by the inclusion of agricultural ethyl alcohol or its derivatives, access to potential markets, tax incentives, imports of foreign-produced fuel, and related concerns that may develop in the future; and

(i) As the board may otherwise direct to fulfill the goals set forth under the Ethanol Development Act, including monitoring contracts for existing ethanol program commitments consummated pursuant to the law in existence prior to September 1, 1993, and solicitation of federal funds.

Source: Laws 1993, LB 364, § 5; Laws 1994, LB 1066, § 54; Laws 2004, LB 983, § 58; Laws 2009, LB316, § 16.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

66-1335 Nebraska Ethanol Board; established; terms; vacancy; meetings; expenses.

(1) The Nebraska Ethanol Board is hereby established. The board shall consist of seven members to be appointed by the Governor with the approval of a majority of the Legislature. The Governor shall make the initial appointments within thirty days after September 1, 1993. Four members shall be actually engaged in farming in this state, one in general farming and one each in the production of corn, wheat, and sorghum. One member shall be actively engaged in business in this state. One member shall represent labor interests in this state. One member shall represent Nebraska petroleum marketers in this state.

(2) Members shall be appointed for terms of four years, except that of the initial appointees the terms of the member representing labor interests and the member engaged in general farming shall expire on August 31, 1994, the terms of the member engaged in sorghum production and the member engaged in wheat production shall expire on August 31, 1995, the term of the member representing petroleum marketers shall expire on August 31, 1996, and the terms of the member engaged in business and the member engaged in corn production shall expire on August 31, 1997. A member shall serve until a successor is appointed and qualified. Not more than four members shall be members of the same political party.

(3) A vacancy on the board shall exist in the event of death, disability, resignation, or removal for cause of a member. Any vacancy on the board arising other than from the expiration of a term shall be filled by appointment for the unexpired portion of the term. An appointment to fill a vacancy shall be made by the Governor with the approval of a majority of the Legislature, and any person so appointed shall have the same qualifications as the person whom he or she succeeds.

(4) The board shall meet at least once annually.

(5) The members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177. The members shall receive twenty-five dollars for each day while engaged in the performance of board duties.

Source: Laws 1993, LB 364, § 6.

66-1336 Administrator.

The board shall retain the services of a full-time administrator to be appointed by the board. The administrator shall hold office at the pleasure of the board.

Source: Laws 1993, LB 364, § 7; Laws 2012, LB782, § 89; Laws 2013, LB222, § 21.

66-1337 Board; administrative powers.

The board may rent office space and employ such personnel as may be necessary for the performance of its duties. The board may employ the services of experts and consultants and expend funds necessary to acquire title to commodities pursuant to section 66-1340, to promote air quality improvement programs, or to otherwise carry out the board's duties under the Ethanol Development Act.

Source: Laws 1993, LB 364, § 8; Laws 2009, LB154, § 13.

66-1338 National ethanol promotion group; board; powers.

The board may appropriate funds and become a member of any national ethanol promotion group.

Source: Laws 1978, LB 424, § 20; Laws 1981, LB 80, § 6; R.S.1943, (1990), § 66-820; Laws 1993, LB 364, § 9.

66-1339 Federal funds; solicitation; use.

The board is encouraged to solicit and authorized to expend any federally distributed funds from the Energy Settlement Fund, account number 6071, or any other federal funds which may become available to the board for ethanol development. Funds collected pursuant to this section shall be remitted to the State Treasurer for credit to the Agricultural Alcohol Fuel Tax Fund.

Source: Laws 1986, LB 1230, § 15; Laws 1989, LB 587, § 9; R.S.1943, (1990), § 66-1315; Laws 1993, LB 364, § 10.

66-1340 Board; accept property; powers.

The board may accept gifts, donations, money, and services, including in-kind resources such as grain owned by the Commodity Credit Corporation and the United States Department of Agriculture. The board may take title to the Commodity Credit Corporation's inventories and use such commodities to carry out the Ethanol Development Act. The board may accept commodities in connection with section 1024 of the Food Security Act of 1985 or in connection with any other section of state or federal law.

Source: Laws 1986, LB 1230, § 16; R.S.1943, (1990), § 66-1316; Laws 1993, LB 364, § 11.

66-1341 Application; information confidential.

Trade secrets, academic and scientific research work, and other proprietary or commercial information which may be filed with an application for a grant or loan or other financial assistance shall not be considered to be public records as defined in section 84-712.01 if the release of such trade secrets, work, or information would give advantage to business competitors and serve no public purpose. Any person seeking release of the trade secrets, work, or

information as a public record shall demonstrate to the satisfaction of the board that the release would not violate this section.

Source: Laws 1989, LB 587, § 14; R.S.1943, (1990), § 66-1321.01; Laws 1993, LB 364, § 12.

66-1342 Repayment of loan; other funds; remittance.

Any repayment of a loan made pursuant to the Ethanol Authority and Development Act as it existed prior to September 1, 1993, shall be remitted to the State Treasurer and shall be credited to the Ethanol Production Incentive Cash Fund. Any return on investment and any money available due to failure to fulfill conditional requirements pursuant to investment agreements entered into prior to April 30, 1992, pursuant to prior law, shall be remitted to the State Treasurer and shall be credited to the fund.

Source: Laws 1986, LB 1230, § 27; Laws 1987, LB 279, § 10; Laws 1992, LB 754, § 7; R.S.Supp.,1992, § 66-1324; Laws 1993, LB 364, § 13.

66-1343 Repealed. Laws 1999, LB 605, § 8.

66-1344 Ethanol tax credits; conditions; limitations; Department of Revenue; powers and duties.

(1) Beginning June 1, 2000, during such period as funds remain in the Ethanol Production Incentive Cash Fund, any ethanol facility shall receive a credit of seven and one-half cents per gallon of ethanol, before denaturing, for new production for a period not to exceed thirty-six consecutive months. For purposes of this subsection, new production means production which results from the expansion of an existing facility's capacity by at least two million gallons first placed into service after June 1, 1999, as certified by the facility's design engineer to the Department of Revenue. For expansion of an existing facility's capacity, new production means production in excess of the average of the highest three months of ethanol production at an ethanol facility during the twenty-four-month period immediately preceding certification of the facility by the design engineer. No credits shall be allowed under this subsection for expansion of an existing facility's capacity until production is in excess of twelve times the three-month average amount determined under this subsection during any twelve-consecutive-month period beginning no sooner than June 1, 2000. New production shall be approved by the Department of Revenue based on such ethanol production records as may be necessary to reasonably determine new production. This credit must be earned on or before December 31, 2003.

(2)(a) Beginning January 1, 2002, any new ethanol facility which is in production at the minimum rate of one hundred thousand gallons annually for the production of ethanol, before denaturing, and which has provided to the Department of Revenue written evidence substantiating that the ethanol facility has received the requisite authority from the Department of Environmental Quality and from the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, on or before June 30, 2004, shall receive a credit of eighteen cents per gallon of ethanol produced for ninety-six consecutive months beginning with the first calendar month for which it is eligible to receive such credit and ending not later than June 30, 2012, if the facility is

defined by subdivision (b)(i) of this subsection, and for forty-eight consecutive months beginning with the first calendar month for which it is eligible to receive such credit and ending not later than June 30, 2008, if the facility is defined by subdivision (b)(ii) of this subsection. The new ethanol facility shall provide an analysis to the Department of Revenue of samples of the product collected according to procedures specified by the department no later than July 30, 2004, and at least annually thereafter. The analysis shall be prepared by an independent laboratory meeting the International Organization for Standardization standard ISO/IEC 17025:1999. Prior to collecting the samples, the new ethanol facility shall notify the department which may observe the sampling procedures utilized by the new ethanol facility to obtain the samples to be submitted for independent analysis. The minimum rate shall be established for a period of at least thirty days. In this regard, the new ethanol facility must produce at least eight thousand two hundred nineteen gallons of ethanol within a thirty-day period. The ethanol must be finished product which is ready for sale to customers.

(b) For purposes of this subsection, new ethanol facility means a facility for the conversion of grain or other raw feedstock into ethanol and other byproducts of ethanol production which (i) is not in production on or before September 1, 2001, or (ii) has not received credits prior to June 1, 1999. A new ethanol facility does not mean an expansion of an existing ethanol plant that does not result in the physical construction of an entire ethanol processing facility or which shares or uses in a significant manner any existing plant's systems or processes and does not include the expansion of production capacity constructed after June 30, 2004, of a plant qualifying for credits under this subsection. This definition applies to contracts entered into after April 16, 2004.

(c) Not more than fifteen million six hundred twenty-five thousand gallons of ethanol produced annually at an ethanol facility shall be eligible for credits under this subsection. Not more than one hundred twenty-five million gallons of ethanol produced at an ethanol facility by the end of the ninety-six-consecutive-month period or forty-eight-consecutive-month period set forth in this subsection shall be eligible for credits under this subsection.

(3) The credits described in this section shall be given only for ethanol produced at a plant in Nebraska at which all fermentation, distillation, and dehydration takes place. No credit shall be given on ethanol produced for or sold for use in the production of beverage alcohol. Not more than ten million gallons of ethanol produced during any twelve-consecutive-month period at an ethanol facility shall be eligible for the credit described in subsection (1) of this section. The credits described in this section shall be in the form of a non-refundable, transferable motor vehicle fuel tax credit certificate. No transfer of credits will be allowed between the ethanol producer and motor vehicle fuel licensees who are related parties.

(4) Ethanol production eligible for credits under this section shall be measured by a device approved by the Division of Weights and Measures of the Department of Agriculture. Confirmation of approval by the division shall be provided by the ethanol facility at the time the initial claim for credits provided under this section is submitted to the Department of Revenue and annually thereafter. Claims submitted by the ethanol producer shall be based on the total number of gallons of ethanol produced, before denaturing, during the reporting period measured in gross gallons.

(5) The Department of Revenue shall prescribe an application form and procedures for claiming credits under this section. In order for a claim for credits to be accepted, it must be filed by the ethanol producer within three years of the date the ethanol was produced or by September 30, 2012, whichever occurs first.

(6) Every producer of ethanol shall maintain records similar to those required by section 66-487. The ethanol producer must maintain invoices, meter readings, load-out sheets or documents, inventory records, including work-in-progress, finished goods, and denaturant, and other memoranda requested by the Department of Revenue relevant to the production of ethanol. On an annual basis, the ethanol producer shall also be required to furnish the department with copies of the reports filed with the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives. The maintenance of all of this information in a provable computer format or on microfilm is acceptable in lieu of retention of the original documents. The records must be retained for a period of not less than three years after the claim for ethanol credits is filed.

(7) For purposes of ascertaining the correctness of any application for claiming a credit provided in this section, the Tax Commissioner (a) may examine or cause to have examined, by any agent or representative designated by him or her for that purpose, any books, papers, records, or memoranda bearing upon such matters, (b) may by summons require the attendance of the person responsible for rendering the application or other document or any officer or employee of such person or the attendance of any other person having knowledge in the premises, and (c) may take testimony and require proof material for his or her information, with power to administer oaths or affirmations to such person or persons. The time and place of examination pursuant to this subsection shall be such time and place as may be fixed by the Tax Commissioner and as are reasonable under the circumstances. In the case of a summons, the date fixed for appearance before the Tax Commissioner shall not be less than twenty days from the time of service of the summons. No taxpayer shall be subjected to unreasonable or unnecessary examinations or investigations. All records obtained pursuant to this subsection shall be subject to the confidentiality requirements and exceptions thereto as provided in section 77-27,119.

(8) To qualify for credits under this section, an ethanol producer shall provide public notice for bids before entering into any contract for the construction of a new ethanol facility. Preference shall be given to a bidder residing in Nebraska when awarding any contract for construction of a new ethanol facility if comparable bids are submitted. For purposes of this subsection, bidder residing in Nebraska means any person, partnership, foreign or domestic limited liability company, association, or corporation authorized to engage in business in the state with employees permanently located in Nebraska. If an ethanol producer enters into a contract for the construction of a new ethanol facility with a bidder who is not a bidder residing in Nebraska, such producer shall demonstrate to the satisfaction of the Department of Revenue in its application for credits that no comparable bid was submitted by a responsible bidder residing in Nebraska. The department shall deny an application for credits if it is determined that the contract was denied to a responsible bidder residing in Nebraska without cause.

(9) The pertinent provisions of Chapter 66, article 7, relating to the administration and imposition of motor fuel taxes shall apply to the administration and

imposition of assessments made by the Department of Revenue relating to excess credits claimed by ethanol producers under the Ethanol Development Act. These provisions include, but are not limited to, issuance of a deficiency following an examination of records, an assessment becoming final after sixty days absent a written protest, presumptions regarding the burden of proof, issuance of deficiency within three years of original filing, issuance of notice by registered or certified mail, issuance of penalties and waiver thereof, issuance of interest and waiver thereof, and issuance of corporate officer or employee or limited liability company manager or member assessments. For purposes of determining interest and penalties, the due date will be considered to be the date on which the credits were used by the licensees to whom the credits were transferred.

(10) If a written protest is filed by the ethanol producer with the department within the sixty-day period in subsection (9) of this section, the protest shall: (a) Identify the ethanol producer; (b) identify the proposed assessment which is being protested; (c) set forth each ground under which a redetermination of the department's position is requested together with facts sufficient to acquaint the department with the exact basis thereof; (d) demand the relief to which the ethanol producer considers itself entitled; and (e) request that an evidentiary hearing be held to determine any issues raised by the protest if the ethanol producer desires such a hearing.

(11) For applications received after April 16, 2004, an ethanol facility receiving benefits under the Ethanol Development Act shall not be eligible for benefits under the Employment and Investment Growth Act, the Invest Nebraska Act, or the Nebraska Advantage Act.

Source: Laws 1990, LB 1124, § 1; Laws 1992, LB 754, § 8; R.S.Supp.,1992, § 66-1326; Laws 1993, LB 364, § 15; Laws 1994, LB 961, § 1; Laws 1995, LB 377, § 7; Laws 1996, LB 1121, § 13; Laws 1999, LB 605, § 1; Laws 2001, LB 536, § 2; Laws 2004, LB 479, § 5; Laws 2004, LB 1065, § 5; Laws 2005, LB 312, § 2; Laws 2008, LB914, § 5.

Cross References

Employment and Investment Growth Act, see section 77-4101.

Invest Nebraska Act, see section 77-5501.

Nebraska Advantage Act, see section 77-5701.

The state is not a debtor, surety, or guarantor of the debt of another with respect to the tax credits authorized by this section. *Callan v. Balka*, 248 Neb. 469, 536 N.W.2d 47 (1995).

66-1344.01 Ethanol tax credits; agreement required; contents.

The Tax Commissioner and the producer eligible to receive credits under subsection (2) of section 66-1344 shall enter into a written agreement. The producer shall agree to produce ethanol at the designated facility and any expansion thereof. The Tax Commissioner, on behalf of the State of Nebraska, shall agree to furnish the producer the tax credits as provided by and limited in section 66-1344 in effect on the date of the agreement. The agreement to produce ethanol in return for the credits shall be sufficient consideration, and the agreement shall be binding upon the state. No credit shall be given to any producer of ethanol which fails to produce ethanol in Nebraska in compliance with the agreement. The agreement shall include:

- (1) The name of the producer;

- (2) The address of the ethanol facility;
- (3) The date of the initial eligibility of the ethanol facility to receive such credits;
- (4) The name plate design capacity of the ethanol facility as of the date of its initial eligibility to receive such credits; and
- (5) The name plate design capacity which the facility is intended to have after the completion of any proposed expansion. If no expansion is contemplated at the time of the initial agreement, the agreement may be amended to include any proposed expansion.

The Tax Commissioner shall not accept any applications for new agreements on or after April 16, 2004.

Source: Laws 2001, LB 536, § 7; Laws 2004, LB 479, § 6; Laws 2004, LB 1065, § 6.

66-1345 Ethanol Production Incentive Cash Fund; created; use; investment; transfers; duties.

(1) There is hereby created the Ethanol Production Incentive Cash Fund which shall be used by the board to pay the credits created in section 66-1344 to the extent provided in this section. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The State Treasurer shall transfer to the Ethanol Production Incentive Cash Fund such money as shall be (a) appropriated to the Ethanol Production Incentive Cash Fund by the Legislature, (b) given as gifts, bequests, grants, or other contributions to the Ethanol Production Incentive Cash Fund from public or private sources, (c) made available due to failure to fulfill conditional requirements pursuant to investment agreements entered into prior to April 30, 1992, (d) received as return on investment of the Ethanol Authority and Development Cash Fund, and (e) credited to the Ethanol Production Incentive Cash Fund pursuant to sections 66-489 and 66-726.

(2) The Department of Revenue shall, at the end of each calendar month, notify the State Treasurer of the amount of motor fuel tax that was not collected in the preceding calendar month due to the credits provided in section 66-1344. The State Treasurer shall transfer from the Ethanol Production Incentive Cash Fund to the Highway Trust Fund an amount equal to such credits less the following amounts:

- (a) For 1993, 1994, and 1995, the amount generated during the calendar quarter by a one-cent tax on motor fuel pursuant to sections 66-489 and 66-6,107;
- (b) For 1996, the amount generated during the calendar quarter by a three-quarters-cent tax on motor fuel pursuant to such sections;
- (c) For 1997, the amount generated during the calendar quarter by a one-half-cent tax on motor fuel pursuant to such sections; and
- (d) For 1998 and each year thereafter, no reduction.

For 1993 through 1997, if the amount generated pursuant to subdivisions (a), (b), and (c) of this subsection and the amount transferred pursuant to subsection (1) of this section are not sufficient to fund the credits provided in section 66-1344, then the credits shall be funded through the Ethanol Production

Incentive Cash Fund but shall not be funded through either the Highway Cash Fund or the Highway Trust Fund. For 1998 and each year thereafter, the credits provided in such section shall be funded through the Ethanol Production Incentive Cash Fund but shall not be funded through either the Highway Cash Fund or the Highway Trust Fund.

If, during any month, the amount of money in the Ethanol Production Incentive Cash Fund is not sufficient to reimburse the Highway Trust Fund for credits earned pursuant to section 66-1344, the Department of Revenue shall suspend the transfer of credits by ethanol producers until such time as additional funds are available in the Ethanol Production Incentive Cash Fund for transfer to the Highway Trust Fund. Thereafter, the Department of Revenue shall, at the end of each month, allow transfer of accumulated credits earned by each ethanol producer on a prorated basis derived by dividing the amount in the fund by the aggregate amount of accumulated credits earned by all ethanol producers.

(3) On or before December 1, 2003, and each December 1 thereafter, the Department of Revenue and the Nebraska Ethanol Board shall jointly submit a report electronically to the Legislature which shall project the anticipated revenue and expenditures from the Ethanol Production Incentive Cash Fund through the termination of the ethanol production incentive programs pursuant to section 66-1344. The initial report shall include a projection of the amount of ethanol production for which the Department of Revenue has entered agreements to provide ethanol production credits pursuant to section 66-1344.01 and any additional ethanol production which the Department of Revenue and the Nebraska Ethanol Board reasonably anticipate may qualify for credits pursuant to section 66-1344.

Source: Laws 1992, LB 754, § 9; R.S.Supp.,1992, § 66-1327; Laws 1993, LB 364, § 16; Laws 1994, LB 961, § 2; Laws 1994, LB 1066, § 55; Laws 1994, LB 1160, § 114; Laws 1995, LB 182, § 62; Laws 1995, LB 377, § 8; Laws 1999, LB 605, § 2; Laws 2001, LB 329, § 13; Laws 2001, LB 536, § 3; Laws 2004, LB 479, § 7; Laws 2004, LB 983, § 59; Laws 2004, LB 1065, § 7; Laws 2007, LB322, § 13; Laws 2007, LB701, § 27; Laws 2010, LB689, § 2; Laws 2011, LB379, § 1; Laws 2012, LB782, § 90; Laws 2014, LB130, § 1; Laws 2017, LB1, § 2; Laws 2017, LB331, § 33.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

66-1345.01 Repealed. Laws 2017, LB1, § 4.

66-1345.02 Repealed. Laws 2017, LB1, § 4.

66-1345.03 Repealed. Laws 2017, LB1, § 4.

66-1345.04 Repealed. Laws 2017, LB1, § 4.

66-1345.05 Funds received by the Department of Revenue; disposition.

Any funds received by the Department of Revenue which result from an ethanol producer claiming excess credit, and any related interest and penalties

thereon, shall be remitted to the State Treasurer for credit to the Ethanol Production Incentive Cash Fund.

Source: Laws 2004, LB 479, § 3.

66-1346 Repealed. Laws 2004, LB 479, § 12.

66-1347 Repealed. Laws 1999, LB 605, § 8.

66-1348 Investment agreements; act; how construed.

Nothing in the Ethanol Development Act shall be construed to extend or affect the terms of any investment agreement entered into by the Ethanol Authority and Development Board prior to April 30, 1992.

Source: Laws 1993, LB 364, § 19.

66-1349 Ethanol facility eligible for tax credits or incentives; employ residents.

Any ethanol facility eligible for tax credits or incentives under the Ethanol Development Act, the Employment and Investment Growth Act, or the Nebraska Advantage Rural Development Act shall whenever possible employ workers who are residents of the State of Nebraska.

Source: Laws 1994, LB 961, § 4; Laws 2005, LB 312, § 3.

Cross References

Employment and Investment Growth Act, see section 77-4101.

Ethanol Development Act, see section 66-1330.

Nebraska Advantage Rural Development Act, see section 77-27,187.

66-1350 Repealed. Laws 2004, LB 810, § 1; Laws 2004, LB 940, § 4.

ARTICLE 14

INTERNATIONAL FUEL TAX AGREEMENT ACT

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§ 66-1401

OILS, FUELS, AND ENERGY

Section	
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66-1401 Act, how cited.

Sections 66-1401 to 66-1427 shall be known and may be cited as the International Fuel Tax Agreement Act.

Source: Laws 1988, LB 836, § 1; Laws 1996, LB 1218, § 22; Laws 1998, LB 1056, § 3; Laws 2004, LB 983, § 60; Laws 2018, LB177, § 4. Effective date July 19, 2018.

66-1402 Purpose of act.

It is the purpose of the International Fuel Tax Agreement Act to simplify the motor fuel tax licensing, bonding, reporting, and remittance requirements imposed on motor carriers involved in interstate commerce by authorizing the director to participate in cooperative fuel tax agreements with another state or states to permit the administration, collection, and enforcement of each state's motor fuel taxes by the base state.

Source: Laws 1988, LB 836, § 2; Laws 1996, LB 1218, § 23.

66-1403 Terms, defined.

For purposes of the International Fuel Tax Agreement Act, unless the context otherwise requires:

(1) Agreement means a cooperative fuel tax agreement entered into under section 66-1404 and, specifically, the International Fuel Tax Agreement;

(2) Base state means the state where (a) the motor vehicles are based for vehicle registration purposes, (b) the operational control and operational records of the licensee's motor vehicles are maintained or can be made available, and (c) some mileage is accrued by motor vehicles within the fleet;

(3) Department means the Division of Motor Carrier Services of the Department of Motor Vehicles;

(4) Director means the Director of Motor Vehicles or his or her designee and includes the Division of Motor Carrier Services of the Department of Motor Vehicles;

(5) Licensee means a person licensed pursuant to the methods established in subdivision (2) of section 66-1406;

(6) Motor fuel means any fuel defined as motor vehicle fuel in section 66-482, any fuel defined as diesel fuel in section 66-482, and any fuel defined as compressed fuel in section 66-6,100; and

(7) Person means any individual, firm, partnership, limited liability company, company, agency, association, or corporation or state, county, city, town, village, or other political subdivision.

Source: Laws 1988, LB 836, § 3; Laws 1991, LB 627, § 135; Laws 1996, LB 1218, § 24; Laws 2018, LB177, § 5.
Effective date July 19, 2018.

66-1404 Cooperative fuel tax agreements; local reciprocal exemption agreements; authorized.

The director may enter into a cooperative fuel tax agreement with another state or states which provides for the administration, collection, and enforcement by the base state of each state's motor fuel taxes on motor fuel used by interstate motor carriers. The agreement shall not contain any provision which exempts any motor vehicle, owner, or operator from complying with the laws, rules, and regulations pertaining to vehicle licensing, size, weight, or load or the operation of motor vehicles upon the highways of this state. The director may also enter into agreements that provide for local reciprocal exemptions from motor fuel tax apportionment for a motor carrier operating within a limited local delivery area near the borders of the state. The agreements for local reciprocal exemptions may only extend to deliveries not more than fifteen miles into another state and shall require a ninety-day notice to rescind the agreement.

Source: Laws 1988, LB 836, § 4; Laws 1996, LB 1218, § 25; Laws 1999, LB 77, § 1.

66-1405 Tax rate; how determined; setoff authorized.

The amount of the tax imposed and collected on behalf of this state under an agreement shall be determined as provided in the Compressed Fuel Tax Act and sections 66-482 to 66-4,149. The Department of Revenue in administering the Compressed Fuel Tax Act and sections 66-482 to 66-4,149 shall provide information and assistance to the director regarding the amount of tax imposed and collected from time to time as may be necessary. The amount of tax due under an agreement may be collected by setoff against any state income tax refund due to the taxpayer pursuant to sections 77-27,210 to 77-27,221.

Source: Laws 1988, LB 836, § 5; Laws 1996, LB 1218, § 26; Laws 1997, LB 720, § 20; Laws 2011, LB289, § 37.

Cross References

Compressed Fuel Tax Act, see section 66-697.

66-1406 Agreements; provisions.

An agreement may provide for:

- (1) Defining the classes of motor vehicles upon which the motor fuel taxes are to be collected under the agreement;
- (2) Establishing methods for motor fuel tax licensing, license revocation, and tax collection for motor carriers by the base state on behalf of itself and all other states which are parties to the agreement;
- (3) Establishing procedures for the granting of credits or refunds;

- (4) Defining conditions and criteria relative to bonding requirements including criteria for exemption from bonding;
- (5) Establishing tax reporting periods and tax report due dates not to exceed one calendar month after the close of the reporting period;
- (6) Providing for a penalty at a rate of fifty dollars for each reporting period or ten percent of the delinquent tax whichever is greater for failure to file a report, for filing a late report, or for filing an underpayment of taxes due;
- (7) Interest on all delinquent taxes at a rate set by the base state;
- (8) Establishing procedures for forwarding of motor fuel taxes, penalties, and interest collected on behalf of another state to that state;
- (9) Record-keeping requirements for licensees; and
- (10) Any additional provisions which will facilitate the administration of the agreement.

Source: Laws 1988, LB 836, § 6; Laws 1991, LB 627, § 136; Laws 2001, LB 387, § 10.

Cross References

Conducting activities without a license, penalty, see section 66-727.

66-1406.01 License required; when.

Any motor carrier involved in interstate commerce who is required to pay motor fuel taxes shall obtain a license from the director pursuant to an agreement entered into under the International Fuel Tax Agreement Act.

Source: Laws 1998, LB 1056, § 4.

66-1406.02 License; director; powers.

(1) The director may suspend, revoke, cancel, or refuse to issue or renew a license under the International Fuel Tax Agreement Act:

(a) If the applicant's or licensee's registration certificate issued pursuant to the International Registration Plan Act has been suspended, revoked, or canceled or the director refused to issue or renew such certificate;

(b) If the applicant or licensee is in violation of sections 75-392 to 75-399;

(c) If the applicant's or licensee's security has been canceled;

(d) If the applicant or licensee failed to provide additional security as required;

(e) If the applicant or licensee failed to file any report or return required by the motor fuel laws, filed an incomplete report or return required by the motor fuel laws, did not file any report or return required by the motor fuel laws electronically, or did not file a report or return required by the motor fuel laws on time;

(f) If the applicant or licensee failed to pay taxes required by the motor fuel laws due within the time provided;

(g) If the applicant or licensee filed any false report, return, statement, or affidavit, required by the motor fuel laws, knowing it to be false;

(h) If the applicant or licensee would no longer be eligible to obtain a license;
or

(i) If the applicant or licensee committed any other violation of the International Fuel Tax Agreement Act or the rules and regulations adopted and promulgated under the act.

(2) Prior to taking any action pursuant to subsection (1) of this section, the director shall notify and advise the applicant or licensee of the proposed action and the reasons for such action in writing, by regular United States mail, to his or her last-known business address as shown on the application or license. The notice shall also include an advisement of the procedures in subsection (3) of this section.

(3) The applicant or licensee may, within thirty days after the mailing of the notice, petition the director in writing for a hearing to contest the proposed action. The hearing shall be commenced in accordance with the rules and regulations adopted and promulgated by the Department of Motor Vehicles. If a petition is filed, the director shall, within twenty days after receipt of the petition, set a hearing date at which the applicant or licensee may show cause why the proposed action should not be taken. The director shall give the applicant or licensee reasonable notice of the time and place of the hearing. If the director's decision is adverse to the applicant or licensee, the applicant or licensee may appeal the decision in accordance with the Administrative Procedure Act.

(4) Except as provided in subsection (2) of section 60-3,205 and subsection (8) of this section, the filing of the petition shall stay any action by the director until a hearing is held and a final decision and order is issued.

(5) Except as provided in subsection (2) of section 60-3,205 and subsection (8) of this section, if no petition is filed at the expiration of thirty days after the date on which the notification was mailed, the director may take the proposed action described in the notice.

(6) Except as provided in subsection (2) of section 60-3,205 and subsection (8) of this section, if, in the judgment of the director, the applicant or licensee has complied with or is no longer in violation of the provisions for which the director took action under this section, the director may reinstate the license without delay. An applicant for reinstatement, issuance, or renewal of a license within three years after the date of suspension, revocation, cancellation, or refusal to issue or renew shall submit a fee of one hundred dollars to the director. The director shall remit the fee to the State Treasurer for credit to the Highway Cash Fund.

(7) Suspension of, revocation of, cancellation of, or refusal to issue or renew a license by the director shall not relieve any person from making or filing the reports or returns required by the motor fuel laws in the manner or within the time required.

(8) Any person who receives notice from the director of action taken pursuant to subsection (1) of this section shall, within three business days, return such registration certificate and license plates issued pursuant to section 60-3,198 to the department. If any person fails to return the registration certificate and license plates to the department, the department shall notify the Nebraska State Patrol that any such person is in violation of this section.

Source: Laws 1998, LB 1056, § 5; Laws 2003, LB 563, § 38; Laws 2006, LB 853, § 22; Laws 2007, LB358, § 11; Laws 2009, LB331, § 13; Laws 2012, LB751, § 47.

Cross References

Administrative Procedure Act, see section 84-920.

International Registration Plan Act, see section 60-3,192.

66-1407 Excess tax paid; credit.

Any licensee paying more tax than is required during the course of a reporting period shall be permitted a credit against future tax liability for the excess tax paid. Upon request, this credit may be refunded to the licensee by the director in accordance with the agreement.

Source: Laws 1988, LB 836, § 7; Laws 1996, LB 1218, § 27.

66-1408 Audits authorized.

An agreement may require the director to perform audits of persons required to be licensed who are based in this state to determine if the motor fuel taxes to be collected under the agreement have been properly reported and paid to each state participating in the agreement. The agreement may authorize other states to perform audits of persons required to be licensed who are based in such other state on behalf of the State of Nebraska and forward the findings to the director. The director may issue a notice of deficiency determination based on the findings from the other state.

The agreement shall not preclude the director from auditing the records of any person who has used motor fuels in this state. Any person required to be licensed shall make his or her records available on request of the director.

If the person is based in this state, the records shall be made available at the location designated by the director or such person may request the director to audit such records at the person's place of business. If the place of business is located outside this state, the director may require the person to reimburse the director for authorized per diem and travel expenses.

Source: Laws 1988, LB 836, § 8; Laws 1996, LB 1218, § 28.

66-1409 Director; disclose information; when.

The director may forward to the representative of another state designated in the agreement any information in the director's possession relative to the manufacture, receipt, sale, use, transportation, or shipment of motor fuels by any person required to be licensed. The director may disclose information to the representative of the other state which relates to the location of officers, motor vehicles, and other real and personal property of persons required to be licensed under the agreement who use motor fuels. Any information covered by an agreement with the Internal Revenue Service may only be released in accordance with such agreement.

Source: Laws 1988, LB 836, § 9; Laws 1996, LB 1218, § 29.

66-1410 Rules and regulations.

The director shall adopt and promulgate rules and regulations necessary to implement any agreement entered into under the International Fuel Tax Agreement Act.

Source: Laws 1988, LB 836, § 10; Laws 1996, LB 1218, § 30.

66-1411 Legal remedies; appeals; rules and regulations.

(1) The legal remedies for any person served with an order or assessment under the International Fuel Tax Agreement Act shall be as prescribed in such act. Appeals from a final order of the director shall be taken as prescribed in sections 84-917 to 84-919.

(2) The director may adopt and promulgate rules and regulations for enforcement, collection, and appeals pursuant to the International Fuel Tax Agreement Act. Any person filing a report or return for tax due shall follow the filing periods or due dates established by the agreement under section 66-1406.

Source: Laws 1988, LB 836, § 11; Laws 1996, LB 1218, § 31; Laws 1997, LB 720, § 21; Laws 2018, LB177, § 14.
Effective date July 19, 2018.

66-1411.01 Director; enforcement powers.

The director may use the provisions of the Uniform State Tax Lien Registration and Enforcement Act for purposes of enforcing the International Fuel Tax Agreement Act.

Source: Laws 1996, LB 1218, § 36.

Cross References

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

66-1412 Agreement; controlling provisions.

If the director enters into any agreement authorized by the International Fuel Tax Agreement Act and the provisions set forth in the agreement are in conflict with any rules or regulations adopted and promulgated by the director, the agreement shall control to the extent of any conflict.

Source: Laws 1988, LB 836, § 12; Laws 1996, LB 1218, § 32.

66-1413 Contract to administer act; authorized.

The Division of Motor Carrier Services of the Department of Motor Vehicles may contract with another state agency or an association organized under the laws of this state, not for profit, to administer for the division the parts of the International Fuel Tax Agreement Act as designated by the director.

Source: Laws 1988, LB 836, § 13; Laws 1996, LB 1218, § 33.

66-1414 Fuel tax; disposition; Motor Carrier Services Division Distributive Fund; created; use; investment.

(1) Any fuel tax collected pursuant to the agreement shall be remitted to the State Treasurer for credit to the Motor Carrier Services Division Distributive Fund to carry out the International Fuel Tax Agreement Act.

(2) The Motor Carrier Services Division Distributive Fund is created. The fund shall be set apart and maintained by the State Treasurer to carry out the International Fuel Tax Agreement Act and the International Registration Plan Act. Any money in the Motor Carrier Services Division Distributive Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds

Investment Act. Any interest received on money in the Motor Carrier Services Division Distributive Fund shall be credited to the Highway Trust Fund.

Source: Laws 1988, LB 836, § 14; Laws 1991, LB 627, § 137; Laws 1994, LB 1066, § 56; Laws 1994, LB 1160, § 115; Laws 1995, LB 182, § 63; Laws 1996, LB 1218, § 34; Laws 1997, LB 720, § 22; Laws 1998, LB 1056, § 6; Laws 2003, LB 563, § 39.

Cross References

International Registration Plan Act, see section 60-3,192.

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

66-1415 Decal fee; Motor Carrier Division Cash Fund; use.

(1) An additional fee may be collected by the issuing agency or association from a licensee for each annual decal issued pursuant to the agreement. The fee shall be in an amount determined by the director to be sufficient to recover reasonable administrative costs of the agreement but not more than ten dollars per annual decal. The fee shall be remitted to the State Treasurer and credited to the Motor Carrier Division Cash Fund, except that the director may by contract with an association provide for the association to retain a portion of the fee as payment for services rendered under the contract.

(2) The Motor Carrier Division Cash Fund shall be used to pay administrative costs of the International Fuel Tax Agreement Act. If any staff used for enforcing the agreement provided for in the act is used for any other state tax or program, the costs attributed to such other tax or program shall be borne by either the General Fund or the fund to which the money resulting from such other tax or program is credited, however it is appropriated by the Legislature. Any money in the Interstate Motor Carriers Base State Cash Fund on July 1, 1996, shall be transferred to the Motor Carrier Division Cash Fund on such date.

Source: Laws 1988, LB 836, § 15; Laws 1996, LB 1218, § 35.

66-1416 Sections; purpose; terms, defined.

The purpose of sections 66-1416 to 66-1419 is to provide an additional method of collecting motor fuels taxes from interstate motor vehicle operators commensurate with their operations in Nebraska and to permit the department to suspend the collection as to transportation entering Nebraska from any other state when it appears that Nebraska tax revenue and interstate highway transportation moving out of Nebraska will not be unduly prejudiced thereby.

For purposes of such sections, (1) fuel used or consumed in operations includes all fuel placed in the supply tanks and consumed in the engine of a qualified motor vehicle and (2) qualified motor vehicle means a motor vehicle used, designed, or maintained for transportation of persons or property which (a) has two axles and a gross vehicle weight or registered gross vehicle weight exceeding twenty-six thousand pounds, (b) has three or more axles regardless of weight, or (c) is used in combination when the weight of such combination exceeds twenty-six thousand pounds gross vehicle or registered gross vehicle weight. Qualified motor vehicle does not include a recreational vehicle.

Source: Laws 2004, LB 983, § 61.

66-1417 Trip permit or payment of motor fuels taxes; required; violation; penalty.

No person shall bring into this state in the fuel supply tanks of a qualified motor vehicle or in any other container, regardless of whether or not the supply tanks are connected to the motor of the vehicle, any motor fuels to be used in the operation of the vehicle in this state unless he or she has purchased a trip permit pursuant to section 66-1418 or paid or made arrangements in advance for payment of Nebraska motor fuels taxes on the gallonage consumed in operating the vehicle in this state.

Any person who brings into this state in the fuel supply tanks of a qualified motor vehicle motor fuels in violation of the International Fuel Tax Agreement Act shall be subject to an administrative penalty of one hundred dollars for each violation to be assessed and collected by the department or another state agency which may be contracted with to act as the department's agent for such purpose. All such penalties collected shall be remitted to the State Treasurer for credit to the Highway Cash Fund.

Source: Laws 2004, LB 983, § 62.

66-1418 Trip permits; issuance; fees.

A trip permit shall be issued before any person required to obtain a trip permit enters this state. The trip permit shall be issued by the director through Internet sales from the department's web site. The trip permit shall be issued for a fee of twenty dollars and shall be valid for a period of seventy-two hours. The fee collected by the director shall be remitted to the State Treasurer for credit to the Highway Cash Fund.

Source: Laws 2004, LB 983, § 63; Laws 2013, LB250, § 2; Laws 2016, LB667, § 1.

66-1419 Records; required.

Every person operating under sections 66-1416 to 66-1419 shall make and keep for a period of three years, or five years if required reports, returns, or statements are not filed, such records as may reasonably be required by the department for the administration of such sections.

If, in the normal conduct of the business, the required records are maintained and kept at an office outside the State of Nebraska, it shall be a sufficient compliance with this section if the records are made available for audit and examination by the department within this state, but such audit and examination shall be without expense to the State of Nebraska.

Source: Laws 2004, LB 983, § 64.

66-1420 Department; powers and duties.

(1) The department may require information as it deems necessary on any report, return, or other statement under the agreement.

(2) The department may require any of the reports, returns, or other filings due from any licensees to be filed electronically.

(3) The department shall prescribe the formats and procedures for electronic filing. The department shall adopt formats and procedures that are reasonably

consistent with the formats and procedures of other states requiring electronic reporting of motor fuel information.

(4) Any person who does not file electronically when required or who fails to use the prescribed formats and procedures shall be considered to have not filed the return, report, or other filing.

Source: Laws 2018, LB177, § 6.
Effective date July 19, 2018.

66-1421 Filing of amended return; interest; waiver of penalty; waiver of interest.

(1)(a) No penalty shall be imposed upon any person who voluntarily reports an underpayment of tax by filing an amended return if the original return is filed on time.

(b) Except as provided in subsection (3) of this section, interest shall not be waived on any additional tax due as reported on any amended return, and such interest shall be computed from the date such tax was due.

(2) The department may in its discretion waive all or any portion of the penalties incurred upon sufficient showing by the taxpayer that the failure to file or pay is not due to negligence, intentional disregard of the law, rules, or regulations, intentional evasion of the tax, or fraud committed with intent to evade the tax or that such penalties should otherwise be waived.

(3) The department may in its discretion waive any and all interest incurred upon sufficient showing by the taxpayer that such interest should be waived.

(4) All penalties collected by the department under this section shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

Source: Laws 2018, LB177, § 7.
Effective date July 19, 2018.

66-1422 Suspension of license or permit; reasons; notice; hearing; order; revocation; reinstatement fee; request to reinstate revoked license.

(1) Any license or permit issued by the department under the motor fuel laws may be suspended for the following reasons:

- (a) Cancellation of security;
- (b) Failure to provide additional security as required;
- (c) Failure to file any report or return, filing an incomplete report or return, or not filing electronically, within the time provided;
- (d) Failure to pay taxes due within the time provided;
- (e) Filing of any false report, return, statement, or affidavit, knowing it to be false;
- (f) Using or placing dyed diesel fuel in a motor vehicle except as authorized under section 66-495.01;
- (g) A licensee no longer being eligible to obtain a license or permit; or
- (h) Any other violation by a licensee of the agreement or the rules and regulations.

(2) The department shall mail notice of suspension of any license or permit.

(3) The licensee or permitholder may, within thirty days after the mailing of the notice of such suspension, petition the department in writing for a hearing

and reconsideration of such suspension. If a petition is filed, the department shall, within twenty days of receipt of the petition, set a hearing date at which the licensee or permitholder may show cause why his or her suspended license or permit should not be canceled. The department shall give the licensee or permitholder reasonable notice of the time and place of such hearing. Within a reasonable time after the conclusion of the hearing, the department shall issue an order either reinstating or revoking such license or permit.

(4) If a petition is not filed within the thirty-day period, the suspended license or permit shall be revoked by the department at the expiration of the period.

(5) Any reissuance of a permit or license to the same person within three years from the date of revocation shall require a reinstatement fee of one hundred dollars to be submitted to the department. The department shall remit the fee to the State Treasurer for credit to the Highway Cash Fund.

(6) Suspension or revocation of a license or permit issued by the department shall not relieve any person from making or filing the reports or returns required by the motor fuel laws in the manner or within the time required.

(7) The licensee or permitholder may request in writing that the department consider reinstating a revoked license. The department shall make a final determination to reinstate or not reinstate and communicate its decision in writing to the licensee or permitholder within thirty days of receipt of the request.

Source: Laws 2018, LB177, § 8.
Effective date July 19, 2018.

66-1423 Notice.

All notices by the department required by the motor fuel laws shall be mailed or electronically transmitted to the address of the licensee or permitholder as shown on the records of the department.

Source: Laws 2018, LB177, § 9.
Effective date July 19, 2018.

66-1424 Department; examine return; deficiency; final assessment; challenge; extension.

(1) As soon as practical after a return is filed, the department shall examine it to determine the correct amount of tax. If the department finds that the amount of tax shown on the return is less than the correct amount, it shall notify the taxpayer of the amount of the deficiency determined.

(2) If any person fails to file a return or has improperly purchased motor fuel without the payment of tax, the department shall estimate the person's liability from any available information and notify the person of the amount of the deficiency determined.

(3) The amount of the deficiency determined shall constitute a final assessment together with interest and penalties thirty days after the date on which notice was mailed to the taxpayer at his or her last-known address unless a written protest is filed with the department within such thirty-day period.

(4) The final assessment provisions of this section shall constitute a final decision of the agency for purposes of the Administrative Procedure Act.

(5) An assessment made by the department shall be presumed to be correct. In any case when the validity of the assessment is questioned, the burden shall be on the person who challenges the assessment to establish by a preponderance of the evidence that the assessment is erroneous or excessive.

(6)(a) Except in the case of a fraudulent return or of neglect or refusal to make a return, the notice of a proposed deficiency determination shall be mailed within three years after the last day of the month following the end of the period for which the amount proposed is to be determined or within three years after the return is filed, whichever period expires later.

(b) The taxpayer and the department may agree, prior to the expiration of the period in subdivision (a) of this subsection, to extend the period during which the notice of a deficiency determination can be mailed. The extension of the period for the mailing of a deficiency determination shall also extend the period during which a refund can be claimed.

Source: Laws 2018, LB177, § 10.
Effective date July 19, 2018.

Cross References

Administrative Procedure Act, see section 84-920.

66-1425 Personal liability; challenge of department's determination; petition for redetermination; hearing; notice; immediate collection of taxes.

(1) Any corporate officer or employee with the authority to decide whether the corporation will pay the taxes imposed upon a corporation by the motor fuel laws, to file any reports or returns required by the motor fuel laws, or to perform any other act required of a corporation under the motor fuel laws shall be personally liable for the payment of the taxes, interest, penalties, or other administrative penalties in the event of willful failure on his or her part to have the corporation perform such act. Such taxes shall be collected in the same manner as provided under the Uniform State Tax Lien Registration and Enforcement Act.

(2) Within thirty days after the day on which the notice and demand are made for the payment of such taxes, any corporate officer or employee seeking to challenge the department's determination as to his or her personal liability for the corporation's unpaid taxes may petition for a redetermination. The petition may include a request for the redetermination of the personal liability of the corporate officer or employee, the redetermination of the amount of the corporation's unpaid taxes, or both. If a petition for redetermination is not filed within the thirty-day period, the determination becomes final at the expiration of the period.

(3) If the requirements prescribed in subsection (2) of this section are satisfied, the department shall abate collection proceedings and shall grant the corporate officer or employee an oral hearing and give him or her ten days' notice of the time and place of such hearing. The department may continue the hearing from time to time as necessary.

(4) Any notice required under this section shall be served personally or by mail in the manner provided in section 66-1406.02.

(5) If the department determines that further delay in the collection of such taxes from the corporate officer or employee will jeopardize future collection

proceedings, nothing in this section shall prevent the immediate collection of such taxes.

(6) For purposes of this section:

(a) Corporation means any corporation and any other entity that is taxed as a corporation under the Internal Revenue Code;

(b) Taxes means all taxes and additions to taxes including interest and penalties imposed under the agreement; and

(c) Willful failure means that failure which was the result of an intentional, conscious, and voluntary action.

Source: Laws 2018, LB177, § 11.
Effective date July 19, 2018.

Cross References

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

66-1426 Interest.

All deficiencies determined by the department and any tax paid after the time provided shall accrue interest at the rate specified in subdivision (7) of section 66-1406, as such rate may from time to time be adjusted, on such deficiency or late payment from the date such tax was due to the date of payment.

Source: Laws 2018, LB177, § 12.
Effective date July 19, 2018.

66-1427 Department; powers.

The department may examine the records of any person holding a license or permit, required to hold a license or permit, or purchasing motor fuel without the payment of tax at any time during regular business hours and make such other investigations as it deems necessary for the proper and efficient administration and enforcement of the agreement.

Source: Laws 2018, LB177, § 13.
Effective date July 19, 2018.

ARTICLE 15

PETROLEUM RELEASE REMEDIAL ACTION

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§ 66-1501

OILS, FUELS, AND ENERGY

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66-1501 Act, how cited.

Sections 66-1501 to 66-1531 shall be known and may be cited as the Petroleum Release Remedial Action Act.

Source: Laws 1989, LB 289, § 1; Laws 1991, LB 409, § 1; Laws 1994, LB 1160, § 116; Laws 1996, LB 1226, § 1; Laws 1998, LB 1161, § 26; Laws 2004, LB 962, § 103; Laws 2010, LB832, § 1.

66-1502 Statement of purpose.

(1) The Legislature restates the declaration of legislative purpose as set forth in section 81-1501 that the public policy of this state is hereby declared to be:

(a) To conserve the water in this state and to protect and improve the quality of water for human consumption, wildlife, fish and other aquatic life, industry, recreation, and other productive, beneficial uses;

(b) To achieve and maintain a reasonable degree of purity of the natural atmosphere of this state that human beings and all other animals and plants which are indigenous to this state will flourish in approximately the same balance as they have in recent history and to adopt and promulgate laws, rules, and regulations and to uniformly enforce the same in such a manner as to give meaningful recognition to the protection of each element of the environment, air, water, and land; and

(c) To cooperate with other states and the federal government to accomplish the objectives set forth in the Environmental Protection Act.

(2) The Legislature finds that the number of leaking petroleum storage tanks throughout the state is increasing and that there exists a serious threat to the health and safety of citizens because petroleum contained in leaking storage tanks is a potential land and ground water contaminant and major fire and explosive hazard. Furthermore, owners of petroleum tanks may not have the ability to assess and clean up any releases from those petroleum tanks.

(3) The Legislature finds and declares that it is in the public interest that a distribution network for petroleum be available to the public in the State of Nebraska. It is essential in this state to encourage owners of petroleum tanks across the state to remain in business to maintain the viability of the distribution network. At the present time, meeting financial responsibility requirements imposed by the federal government has placed a burden on the owners of petroleum tanks that jeopardizes their ability to store and distribute petroleum and to remain a part of the distribution network.

Source: Laws 1989, LB 289, § 2.

Cross References

Environmental Protection Act, see section 81-1532.

66-1503 Definitions, where found.

For purposes of the Petroleum Release Remedial Action Act, the definitions found in sections 66-1504 to 66-1515.01 shall be used.

Source: Laws 1989, LB 289, § 3; Laws 1991, LB 409, § 2; Laws 1994, LB 1160, § 117.

66-1504 Department, defined.

Department shall mean the Department of Environmental Quality.

Source: Laws 1989, LB 289, § 4; Laws 1993, LB 3, § 38.

66-1505 Repealed. Laws 1994, LB 1160, § 127.

66-1506 Fund, defined.

Fund shall mean the Petroleum Release Remedial Action Cash Fund created in section 66-1519.

Source: Laws 1989, LB 289, § 6.

66-1507 Importer, defined.

Importer shall mean any person who imports or causes to be imported petroleum from any other state or territory of the United States or from a foreign country for such person's own use in or for sale in this state, whether or not in the original package, receptacle, or container. Importer shall not include a person who imports petroleum in a tank directly connected to the engine of a motor vehicle, train, watercraft, or airplane for purposes of providing fuel to the engine to which the tank is connected.

Source: Laws 1989, LB 289, § 7.

66-1508 Operator, defined.

Operator shall mean a person in control of or having responsibility for the daily operation of a tank. Operator shall not include a person described in subsection (2) of section 66-1509.

Source: Laws 1989, LB 289, § 8; Laws 1991, LB 409, § 3.

66-1509 Owner, defined.

(1) Owner shall mean:

(a) In the case of a tank in use on or after November 8, 1984, or brought into use after such date, any person who owns a tank used for the storage, use, or dispensing of petroleum; and

(b) In the case of a tank in use before November 8, 1984, but no longer in use on such date, any person who owned such tank immediately before the discontinuation of its use.

(2) Owner shall not include a person who, without participating in the management of a tank and otherwise not engaged in petroleum production, refining, and marketing:

(a) Holds indicia of ownership primarily to protect his or her security interest in a tank or a lienhold interest in the property on or within which a tank is or was located; or

(b) Acquires ownership of a tank or the property on or within which a tank is or was located:

(i) Pursuant to a foreclosure of a security interest in the tank or of a lienhold interest in the property; or

(ii) If the tank or the property was security for an extension of credit previously contracted, pursuant to a sale under judgment or decree, pursuant to a conveyance under a power of sale contained within a trust deed or from a trustee, or pursuant to an assignment or deed in lieu of foreclosure.

(3) Ownership of a tank or the property on or within which a tank is or was located shall not be acquired by a fraudulent transfer, as provided in the Uniform Fraudulent Transfer Act.

Source: Laws 1989, LB 289, § 9; Laws 1991, LB 409, § 4; Laws 1996, LB 1226, § 3.

Cross References

Uniform Fraudulent Transfer Act, see section 36-701.

66-1510 Petroleum, defined.

Petroleum shall mean:

(1) For purposes of the fee provisions of section 66-1521:

(a) Motor vehicle fuel as defined in section 66-482, except natural gasoline used as a denaturant by an ethanol facility as defined in section 66-1333; and

(b) Diesel fuel as defined in section 66-482, including kerosene which has been blended for use as a motor fuel; and

(2) For purposes of all provisions of the Petroleum Release Remedial Action Act other than the fee provisions of section 66-1521:

(a) The fuels defined in subdivision (1) of this section; and

(b) A fraction of crude oil that is liquid at a temperature of sixty degrees Fahrenheit and a pressure of fourteen and seven-tenths pounds per square inch absolute, except any such fraction which is regulated as a hazardous substance under section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601(14), as such act existed on January 1, 2005.

Source: Laws 1989, LB 289, § 10; Laws 1994, LB 1160, § 119; Laws 1995, LB 182, § 64; Laws 1997, LB 517, § 1; Laws 2004, LB 983, § 65; Laws 2005, LB 298, § 1.

66-1511 Refiner, defined.

Refiner shall mean any person who refines, prepares, blends, distills, manufactures, or compounds petroleum in Nebraska for such person's own use in this state or for sale or delivery in this state.

Source: Laws 1989, LB 289, § 11.

66-1512 Release, defined.

Release shall mean any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from a tank or any overfilling of a tank into ground water, surface water, surface soils, or subsurface soils whether occurring before, on, or after May 27, 1989.

Source: Laws 1989, LB 289, § 12; Laws 1991, LB 409, § 5.

66-1513 Remedial action, defined.

Remedial action shall mean any immediate or long-term response to a release or suspected release in accordance with rules and regulations adopted and promulgated by the department or the State Fire Marshal, including tank testing only in conjunction with a release or suspected release, site investigation, site assessment, cleanup, restoration, mitigation, and any other action ordered by the department or the State Fire Marshal which is reasonable and necessary. Remedial action shall not include:

- (1) Tank restoration, upgrading, replacement, or rehabilitation;
- (2) Actions which do not minimize, eliminate, or clean up a release or suspected release to protect the public safety, health, and welfare or the environment; or
- (3) Aesthetic improvements.

Costs of remedial action shall not include costs for the actions specified in subdivisions (1) through (3) of this section, loss of income, attorney's fees, or reimbursement for the responsible person's own time spent in planning and administering a corrective action plan.

Source: Laws 1989, LB 289, § 13; Laws 1991, LB 409, § 6; Laws 1996, LB 1226, § 4.

66-1514 Responsible person, defined.

Responsible person shall mean a person who is an owner or operator of a tank. If an owner or operator is unwilling or unable or fails to comply with required remedial action or to pay a third-party claim, responsible person shall

also mean any of the following who voluntarily propose to implement required remedial action or to pay the claim:

- (1) A person in the chain of title of a tank or in the property on or within which a tank is or was located;
- (2) A person who holds a security interest in a tank or a lienhold interest in the property on or within which a tank is or was located; or
- (3) A person who has acquired ownership of a tank or the property on or within which a tank is or was located:
 - (a) Pursuant to a foreclosure of a security interest in the tank or a lienhold interest in the property; or
 - (b) If the tank or the property was security for an extension of credit previously contracted, pursuant to a sale under judgment or decree, pursuant to a conveyance under a power of sale contained within a trust deed or from a trustee, or pursuant to an assignment or deed in lieu of foreclosure.

Such voluntary action shall not be construed to render such party responsible or liable for remedial action or payment of the claim.

Source: Laws 1989, LB 289, § 14; Laws 1991, LB 409, § 7; Laws 1996, LB 1226, § 5.

66-1514.01 Supplier, defined.

Supplier shall mean any person who owns petroleum products imported by barge, barge line, or pipeline and stored at a barge, barge line, or pipeline terminal in this state.

Source: Laws 1994, LB 1160, § 118.

66-1515 Tank, defined.

Tank shall mean any one or a combination of stationary aboveground or underground containers and enclosures, including structures and appurtenances connected to them, that is or has been used to contain or dispense petroleum, but tank shall not include any pipeline facilities, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. chapter 24, or the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. chapter 29, as in effect on January 1, 1988, or any lease production tank used in the production of crude oils.

Source: Laws 1989, LB 289, § 15.

66-1515.01 Third-party claim, defined.

Third-party claim shall mean a final judgment against a responsible person obtained by a third party for compensation for bodily injury and property damage caused by a release first reported after January 1, 1990.

Source: Laws 1991, LB 409, § 8.

66-1516 Responsibility for release or third-party claim; avoidance; prohibited; when.

Except as provided in section 81-15,124.05, no responsible person may avoid responsibility under state law for a release or third-party claim by means of a conveyance of any right, title, or interest in real property or by any indemnifica-

tion, hold-harmless, or similar agreement. This section shall not be construed to:

(1) Prohibit a responsible person from entering into an agreement by which the person is insured or is a member of a risk retention group and is thereby indemnified for part or all of the liability;

(2) Prohibit the enforcement of an insurance, hold-harmless, or indemnification agreement; or

(3) Bar a cause of action brought by a responsible person or by an insurer or guarantor, whether by right of subrogation or otherwise.

Source: Laws 1989, LB 289, § 16; Laws 1991, LB 409, § 9; Laws 2001, LB 461, § 1.

66-1517 Reimbursement for remedial actions and third-party claims; act; how construed.

Reimbursement for remedial actions and third-party claims shall be governed by the Petroleum Release Remedial Action Act.

Nothing in the act shall be construed to limit the powers of the department or preclude the pursuit of any other administrative, civil, injunctive, or criminal remedies by the department or any other person. Administrative remedies need not be exhausted in order to proceed under the act. The remedies provided by the act shall be in addition to those provided under existing statutory or common law.

For purposes of section 25-328, the state shall have an interest in any litigation which might result in a third-party claim.

Nothing in the act shall be construed to limit a person’s duty to notify the department and the State Fire Marshal or to take other action related to a release as required pursuant to the Environmental Protection Act or the Petroleum Products and Hazardous Substances Storage and Handling Act.

Source: Laws 1989, LB 289, § 17; Laws 1991, LB 409, § 10.

Cross References

Environmental Protection Act, see section 81-1532.

Petroleum Products and Hazardous Substances Storage and Handling Act, see section 81-15,117.

66-1518 Rules and regulations; schedule of rates; use.

(1) The Environmental Quality Council shall adopt and promulgate rules and regulations governing reimbursements authorized under the Petroleum Release Remedial Action Act. Such rules and regulations shall include:

(a) Procedures regarding the form and procedure for application for payment or reimbursement from the fund, including the requirement for timely filing of applications;

(b) Procedures for the requirement of submitting cost estimates for phases or stages of remedial actions, procurement requirements to be followed by responsible persons, and requirements for reuse of fixtures and tangible personal property by responsible persons during a remedial action;

(c) Procedures for investigation of claims for payment or reimbursement;

(d) Procedures for determining the amount and type of costs that are eligible for payment or reimbursement from the fund;

(e) Procedures for auditing persons who have received payments from the fund;

(f) Procedures for reducing reimbursements made for a remedial action for failure by the responsible person to comply with applicable statutory or regulatory requirements. Reimbursement may be reduced as much as one hundred percent; and

(g) Other procedures necessary to carry out the act.

(2) The Director of Environmental Quality shall (a) estimate the cost to complete remedial action at each petroleum contaminated site where the responsible party has been ordered by the department to begin remedial action, and, based on such estimates, determine the total cost that would be incurred in completing all remedial actions ordered; (b) determine the total estimated cost of all approved remedial actions; (c) determine the total dollar amount of all pending claims for payment or reimbursement; (d) determine the total of all funds available for reimbursement of pending claims; and (e) include the determinations made pursuant to this subsection in the department's annual report to the Legislature.

(3) The Department of Environmental Quality shall make available to the public a current schedule of reasonable rates for equipment, services, material, and personnel commonly used for remedial action. The department shall consider the schedule of reasonable rates in reviewing all costs for the remedial action which are submitted in a plan. The rates shall be used to determine the amount of reimbursement for the eligible and reasonable costs of the remedial action, except that (a) the reimbursement for the costs of the remedial action shall not exceed the actual eligible and reasonable costs incurred by the responsible person or his or her designated representative and (b) reimbursement may be made for costs which exceed or are not included on the schedule of reasonable rates if the application for such reimbursement is accompanied by sufficient evidence for the department to determine and the department does determine that such costs are reasonable.

Source: Laws 1989, LB 289, § 18; Laws 1991, LB 409, § 11; Laws 1993, LB 3, § 39; Laws 1994, LB 1349, § 9; Laws 1996, LB 1226, § 6; Laws 1997, LB 517, § 2; Laws 1998, LB 1161, § 27; Laws 1999, LB 270, § 1; Laws 2001, LB 461, § 2; Laws 2009, LB154, § 14.

66-1519 Petroleum Release Remedial Action Cash Fund; created; use; investment.

(1) There is hereby created the Petroleum Release Remedial Action Cash Fund to be administered by the department. Revenue from the following sources shall be remitted to the State Treasurer for credit to the fund:

(a) The fees imposed by sections 66-1520 and 66-1521;

(b) Money paid under an agreement, stipulation, cost-recovery award under section 66-1529.02, or settlement; and

(c) Money received by the department in the form of gifts, grants, reimbursements, property liquidations, or appropriations from any source intended to be used for the purposes of the fund.

(2) Money in the fund may be spent for: (a) Reimbursement for the costs of remedial action by a responsible person or his or her designated representative and costs of remedial action undertaken by the department in response to a

release first reported after July 17, 1983, and on or before June 30, 2020, including reimbursement for damages caused by the department or a person acting at the department’s direction while investigating or inspecting or during remedial action on property other than property on which a release or suspected release has occurred; (b) payment of any amount due from a third-party claim; (c) fee collection expenses incurred by the State Fire Marshal; (d) direct expenses incurred by the department in carrying out the Petroleum Release Remedial Action Act; (e) other costs related to fixtures and tangible personal property as provided in section 66-1529.01; (f) interest payments as allowed by section 66-1524; (g) claims approved by the State Claims Board authorized under section 66-1531; (h) the direct and indirect costs incurred by the department in responding to spills and other environmental emergencies related to petroleum or petroleum products; and (i) up to one million five hundred thousand dollars each fiscal year of the department’s cost-share obligations and operation and maintenance obligations under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 et seq.

(3) Transfers may be made from the Petroleum Release Remedial Action Cash Fund to the General Fund at the direction of the Legislature.

(4) Transfers may be made from the Petroleum Release Remedial Action Cash Fund to the Superfund Cost Share Cash Fund at the direction of the Legislature.

(5) Any money in the Petroleum Release Remedial Action Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1989, LB 289, § 19; Laws 1991, LB 409, § 12; Laws 1993, LB 237, § 1; Laws 1994, LB 1066, § 57; Laws 1996, LB 1226, § 7; Laws 1998, LB 1161, § 28; Laws 1999, LB 270, § 2; Laws 2001, LB 461, § 3; Laws 2002, LB 1003, § 41; Laws 2002, LB 1310, § 7; Laws 2003, LB 367, § 2; Laws 2004, LB 962, § 105; Laws 2004, LB 1065, § 9; Laws 2005, LB 40, § 4; Laws 2008, LB1145, § 1; Laws 2009, LB154, § 15; Laws 2011, LB2, § 6; Laws 2011, LB29, § 2; Laws 2012, LB873, § 1; Laws 2016, LB887, § 1; Laws 2017, LB331, § 34.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

66-1519.01 Petroleum Release Remedial Action Cash Fund; transfer to Wastewater Treatment Facilities Construction Loan Fund; authorized; repayment; contracts authorized.

(1) Prior to December 31, 1996, the department may authorize the State Treasurer to transfer funds from the Petroleum Release Remedial Action Cash Fund to the Wastewater Treatment Facilities Construction Loan Fund in such amount as determined by the department to be necessary to satisfy the state match requirement necessary to obtain federal capitalization grants under the federal Clean Water Act, as defined in section 81-15,149. The department may enter into contracts for repayment of such amounts, plus any additional amounts, including interest, determined by the department to be reasonable

and necessary with respect to such transfers. Such contracts may allow repayments to be completed on or after December 31, 1996.

(2) Prior to December 31, 1996, the department may authorize the State Treasurer to deposit amounts received from the Wastewater Treatment Facilities Construction Loan Fund, including amounts due from federal capitalization grants for the benefit of the Wastewater Treatment Facilities Construction Loan Fund, in the Petroleum Release Remedial Action Cash Fund. The department may authorize the State Treasurer to repay such amounts, plus any additional amounts, including interest, determined by the department to be reasonable and necessary with respect to such deposits, and the department may enter into contracts with respect thereto for the benefit of the Wastewater Treatment Facilities Construction Loan Fund. The terms of any such contracts or authorizations may end on or after December 31, 1996.

(3) The department may agree, in the contracts authorized under subsection (2) of this section, that specific amounts or sources of money in the Petroleum Release Remedial Action Cash Fund shall be obligated or pledged to the repayment of deposits from the Wastewater Treatment Facilities Construction Loan Fund, and that some or all of such specified amounts shall not be available to provide reimbursement pursuant to section 66-1523 or payments pursuant to section 66-1529.01 or 66-1529.02. Such specified amounts shall not exceed the amounts the department deems reasonably necessary to provide adequate security for the repayment of deposits. Any such pledge shall be valid and binding from the time the pledge is made, the amounts or sources of money so pledged shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, the lien shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise, regardless of whether the parties have notice thereof, and no such pledge agreement need be recorded.

Source: Laws 1996, LB 1226, § 2; Laws 1998, LB 1161, § 29.

66-1520 Owner of registered tank; petroleum release remedial action fee; amount.

(1) On each January 1, all owners of operating tanks registered in accordance with section 81-15,121 shall pay a petroleum release remedial action fee of ninety dollars to the State Fire Marshal for each registered tank.

(2) The State Fire Marshal shall remit the fees received pursuant to this section to the State Treasurer for credit to the fund.

Source: Laws 1989, LB 289, § 20; Laws 1991, LB 409, § 13; Laws 1998, LB 1161, § 30.

66-1521 Petroleum release remedial action fee; amount; license required; filing; violation; penalty; Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue; powers and duties; Petroleum Release Remedial Action Collection Fund; created; use; investment.

(1) A petroleum release remedial action fee is hereby imposed upon the producer, refiner, importer, distributor, wholesaler, or supplier who engages in the sale, distribution, delivery, and use of petroleum within this state, except that the fee shall not be imposed on petroleum that is exported. The fee shall also be imposed on diesel fuel which is indelibly dyed. The amount of the fee shall be nine-tenths of one cent per gallon on motor vehicle fuel as defined in

section 66-482 and three-tenths of one cent per gallon on diesel fuel as defined in section 66-482. The amount of the fee shall be used first for payment of claims approved by the State Claims Board pursuant to section 66-1531; second, up to three million dollars of the fee per year shall be used for reimbursement of owners and operators under the Petroleum Release Remedial Action Act for investigations of releases ordered pursuant to section 81-15,124; and third, the remainder of the fee shall be used for any other purpose authorized by section 66-1519. The fee shall be paid by all producers, refiners, importers, distributors, wholesalers, and suppliers subject to the fee by filing a monthly return on or before the twentieth day of the calendar month following the monthly period to which it relates. The pertinent provisions, specifically including penalty provisions, of the motor fuel laws as defined in section 66-712 shall apply to the administration and collection of the fee except for the treatment given refunds. There shall be a refund allowed on any fee paid on petroleum which was taxed and then exported, destroyed, or purchased for use by the United States Government or its agencies. The department may also adjust for all errors in the payment of the fee. In each calendar year, no claim for refund related to the fee can be for an amount less than ten dollars.

(2) No producer, refiner, importer, distributor, wholesaler, or supplier shall engage in the sale, distribution, delivery, or use of petroleum in this state without having first obtained a petroleum release remedial action license. Application for a license shall be made to the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue upon a form prepared and furnished by the division. If the applicant is an individual, the application shall include the applicant's social security number. Failure to obtain a license prior to engaging in the sale, distribution, delivery, or use of petroleum shall be a Class IV misdemeanor. The division may suspend or cancel the license of any producer, refiner, importer, distributor, wholesaler, or supplier who fails to pay the fee imposed by subsection (1) of this section in the same manner as licenses are suspended or canceled pursuant to section 66-720.

(3) The division may adopt and promulgate rules and regulations necessary to carry out this section.

(4) The division shall deduct and withhold from the petroleum release remedial action fee collected pursuant to this section an amount sufficient to reimburse the direct costs of collecting and administering the petroleum release remedial action fee. Such costs shall not exceed one hundred fifty thousand dollars for each fiscal year. The one hundred fifty thousand dollars shall be prorated, based on the number of months the fee is collected, whenever the fee is collected for only a portion of a year. The amount deducted and withheld for costs shall be deposited in the Petroleum Release Remedial Action Collection Fund which is hereby created. The Petroleum Release Remedial Action Collection Fund shall be appropriated to the Department of Revenue, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Petroleum Release Remedial Action Collection Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(5) The division shall collect the fee imposed by subsection (1) of this section.

Source: Laws 1989, LB 289, § 21; Laws 1991, LB 409, § 14; Laws 1991, LB 627, § 139; Laws 1994, LB 1066, § 58; Laws 1994, LB 1160,

§ 120; Laws 1997, LB 752, § 153; Laws 1998, LB 1161, § 31; Laws 2000, LB 1067, § 31; Laws 2004, LB 983, § 66; Laws 2009, LB165, § 1; Laws 2009, First Spec. Sess., LB3, § 41; Laws 2012, LB727, § 26.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

66-1522 Repealed. Laws 1998, LB 1161, § 99.**66-1523 Reimbursement; amount; limitations; Prompt Payment Act applicable.**

(1) Except as provided in subsection (2) of this section, the department shall provide reimbursement from the fund in accordance with section 66-1525 to eligible responsible persons for the cost of remedial action for releases reported after July 17, 1983, and on or before June 30, 2020, and for the cost of paying third-party claims. The reimbursement for the cost of remedial action shall not exceed nine hundred seventy-five thousand dollars per occurrence. The total of the claims paid under section 66-1531 and the reimbursement for third-party claims shall not exceed one million dollars per occurrence. The responsible person shall pay the first ten thousand dollars of the cost of the remedial action or third-party claim, twenty-five percent of the remaining cost of the remedial action or third-party claim not to exceed fifteen thousand dollars, and the amount of any reduction authorized under subsection (5) of section 66-1525. If the department determines that a responsible person was ordered to take remedial action for a release which was later found to be from a tank not owned or operated by such person, (a) such person shall be fully reimbursed and shall not be required to pay the first cost or percent of the remaining cost as provided in this subsection and (b) the first cost and percent of the remaining cost not required to be paid by the person ordered to take remedial action shall be paid to the fund as a cost of remedial action by the owner or operator of the tank found to be the cause of the release. In no event shall reimbursements or payments from the fund exceed the annual aggregate of one million nine hundred seventy-five thousand dollars per responsible person. Reimbursement of a cost incurred as a result of a suspension ordered by the department shall not be limited by this subsection if the suspension was caused by insufficiency in the fund to provide reimbursement.

(2) Upon the determination by the department that the responsible person sold no less than two thousand gallons of petroleum and no more than two hundred fifty thousand gallons of petroleum during the calendar year immediately preceding the first report of the release or stored less than ten thousand gallons of petroleum in the calendar year immediately preceding the first report of the release, the department shall provide reimbursement from the fund in accordance with section 66-1525 to such an eligible person for the cost of remedial action for releases reported after July 17, 1983, and on or before June 30, 2020, and for the cost of paying third-party claims. The reimbursement for the cost of remedial action shall not exceed nine hundred eighty-five thousand dollars per occurrence. The total of the claims paid under section 66-1531 and the reimbursement for third-party claims shall not exceed one million dollars per occurrence. The responsible person shall pay the first five thousand dollars of the cost of the remedial action or third-party claim, twenty-five percent of the remaining cost of the remedial action or third-party claim not to exceed ten

thousand dollars, and the amount of any reduction authorized under subsection (5) of section 66-1525. If the department determines that a responsible person was ordered to take remedial action for a release which was later found to be from a tank not owned or operated by such person, (a) such person shall be fully reimbursed and shall not be required to pay the first cost or percent of the remaining cost as provided in this subsection and (b) the first cost and percent of the remaining cost not required to be paid by the person ordered to take remedial action shall be paid to the fund as a cost of remedial action by the owner or operator of the tank found to be the cause of the release. In no event shall reimbursements or payments from the fund exceed the annual aggregate of one million nine hundred eighty-five thousand dollars per responsible person. Reimbursement of a cost incurred as a result of a suspension ordered by the department shall not be limited by this subsection if the suspension was caused by insufficiency in the fund to provide reimbursement.

(3) The department may make partial reimbursement during the time that remedial action is being taken if the department is satisfied that the remedial action being taken is as required by the department.

(4) If the fund is insufficient for any reason to reimburse the amount set forth in this section, the maximum amount that the fund shall be required to reimburse is the amount in the fund. If reimbursements approved by the department exceed the amount in the fund, reimbursements with interest shall be made when the fund is sufficiently replenished in the order in which the applications for them were received by the department, except that an application pending before the department on January 1, 1996, submitted by a local government as defined in section 13-2202 shall, after July 1, 1996, be reimbursed first when funds are available. This exception applies only to local government applications pending on and not submitted after January 1, 1996.

(5) Applications for reimbursement properly made before, on, or after April 16, 1996, shall be considered bills for goods or services provided for third parties for purposes of the Prompt Payment Act.

(6) Notwithstanding any other provision of law, there shall be no reimbursement from the fund for the cost of remedial action or for the cost of paying third-party claims for any releases reported on or after July 1, 2020.

(7) For purposes of this section, occurrence shall mean an accident, including continuous or repeated exposure to conditions, which results in a release from a tank.

Source: Laws 1989, LB 289, § 23; Laws 1991, LB 409, § 16; Laws 1993, LB 237, § 2; Laws 1996, LB 1226, § 9; Laws 1998, LB 1161, § 32; Laws 1999, LB 270, § 3; Laws 2001, LB 461, § 4; Laws 2004, LB 962, § 106; Laws 2008, LB1145, § 2; Laws 2012, LB873, § 2; Laws 2016, LB887, § 2.

Cross References

Prompt Payment Act, see section 81-2401.

66-1524 State not liable; when; payment of principal and interest on unpaid applications.

The State of Nebraska shall not be liable for any reimbursement under the Petroleum Release Remedial Action Act in the event that the fund is insufficient to reimburse the amount set forth in section 66-1523. Interest on any unpaid

application for reimbursement shall continue to accrue on the principal amount of the application pursuant to the Prompt Payment Act until the principal amount of the reimbursement is paid, except such interest is not a liability of the state and is not required to be paid during any period of time that the fund is insufficient to pay the reimbursement.

On and after April 16, 1996, the department shall pay any unpaid applications by first paying the principal amount of all unpaid applications and then any accrued interest on the unpaid applications, except that the department shall not pay interest on interest. Notwithstanding provisions of the Prompt Payment Act and for purposes of applications on file with the department on April 16, 1996, applicants shall request payment of interest within ninety days of such date. For applications filed after April 16, 1996, all provisions of the Prompt Payment Act shall apply.

Source: Laws 1989, LB 289, § 24; Laws 1996, LB 1226, § 10.

Cross References

Prompt Payment Act, see section 81-2401.

66-1525 Reimbursement; application; procedure; State Fire Marshal; duties; reduction of reimbursement; notification required.

(1) Any responsible person or his or her designated representative who has taken remedial action in response to a release first reported after July 17, 1983, and on or before June 30, 2020, or against whom there is a third-party claim may apply to the department under the rules and regulations adopted and promulgated pursuant to section 66-1518 for reimbursement for the costs of the remedial action or third-party claim. Partial payment of such reimbursement to the responsible person may be authorized by the department at the approved stages prior to the completion of remedial action when a remedial action plan has been approved. If any stage is projected to take more than ninety days to complete partial payments may be requested every sixty days. Such partial payment may include the eligible and reasonable costs of such plan or pilot projects conducted during the remedial action.

(2) No reimbursement may be made unless the department makes the following eligibility determinations:

(a) The tank was in substantial compliance with any rules and regulations of the United States Environmental Protection Agency, the State Fire Marshal, and the department which were applicable to the tank. Substantial compliance shall be determined by the department taking into consideration the purposes of the Petroleum Release Remedial Action Act and the adverse effect that any violation of the rules and regulations may have had on the tank thereby causing or contributing to the release and the extent of the remedial action thereby required;

(b) Either the State Fire Marshal or the department was given notice of the release in substantial compliance with the rules and regulations adopted and promulgated pursuant to the Environmental Protection Act and the Petroleum Products and Hazardous Substances Storage and Handling Act. Substantial compliance shall be determined by the department taking into consideration the purposes of the Petroleum Release Remedial Action Act and the adverse effect that any violation of the notice provisions of the rules and regulations may have had on the remedial action being taken in a prompt, effective, and efficient manner;

(c) The responsible person reasonably cooperated with the department and the State Fire Marshal in responding to the release;

(d) The department has approved the plan submitted by the responsible person for the remedial action in accordance with rules and regulations adopted and promulgated by the department pursuant to the Environmental Protection Act or the Petroleum Products and Hazardous Substances Storage and Handling Act or that portion of the plan for which payment or reimbursement is requested. However, responsible persons may undertake remedial action prior to approval of a plan by the department or during the time that remedial action at a site was suspended at any time after April 1995 because the fund was insufficient to pay reimbursements and be eligible for reimbursement at a later time if the responsible person complies with procedures provided to the responsible party by the department or set out in rules and regulations adopted and promulgated by the Environmental Quality Council;

(e) The costs for the remedial action were actually incurred by the responsible person or his or her designated representative after May 27, 1989, and were eligible and reasonable;

(f) If reimbursement for a third-party claim is involved, the cause of action for the third-party claim accrued after April 26, 1991, and the Attorney General was notified by any person of the service of summons for the action within ten days of such service; and

(g) The responsible person or his or her designated representative has paid the amount specified in subsection (1) or (2) of section 66-1523.

(3) The State Fire Marshal shall review each application prior to consideration by the department and provide to the department any information the State Fire Marshal deems relevant to subdivisions (2)(a) through (g) of this section. The State Fire Marshal shall issue a determination with respect to an applicant's compliance with rules and regulations adopted and promulgated by the State Fire Marshal. The State Fire Marshal shall issue a compliance determination to the department within thirty days after receiving an application from the department.

(4) The department may withhold taking action on an application during the pendency of an enforcement action by the state or federal government related to the tank or a release from the tank.

(5) Reimbursements made for a remedial action may be reduced as much as one hundred percent for failure by the responsible person to comply with applicable statutory or regulatory requirements. In determining the amount of the reimbursement reduction, the department shall consider:

- (a) The extent of and reasons for noncompliance;
- (b) The likely environmental impact of the noncompliance; and
- (c) Whether noncompliance was negligent, knowing, or willful.

(6) Except as provided in subsection (4) of this section, the department shall notify the responsible person of its approval or denial of the remedial action plan within one hundred twenty days after receipt of a remedial action plan which contains all the required information. If after one hundred twenty days the department fails to either deny, approve, or amend the remedial action plan

submitted, the proposed plan shall be deemed approved. If the remedial action plan is denied, the department shall provide the reasons for such denial.

Source: Laws 1989, LB 289, § 25; Laws 1991, LB 409, § 17; Laws 1993, LB 237, § 3; Laws 1994, LB 1349, § 10; Laws 1996, LB 1226, § 11; Laws 1998, LB 1161, § 33; Laws 1999, LB 270, § 4; Laws 2001, LB 461, § 5; Laws 2004, LB 962, § 107; Laws 2008, LB1145, § 3; Laws 2012, LB873, § 3; Laws 2016, LB887, § 3.

Cross References

Environmental Protection Act, see section 81-1532.

Petroleum Products and Hazardous Substances Storage and Handling Act, see section 81-15,117.

66-1526 Reimbursement; not subject to legal process or attachment; when.

The amount of reimbursement to be paid for remedial action which was done by a third party shall not be subject to legal process or attachment if paid to the responsible person for the purpose of payment to a third party who performed the remedial action.

Source: Laws 1989, LB 289, § 26.

66-1527 Failure to complete remedial action; reimburse fund.

If the responsible person who has received partial reimbursement from the fund for remedial action does not complete the remedial action as required by the rules and regulations, the responsible person shall reimburse to the fund an amount equal to the reimbursements received from the fund.

Source: Laws 1989, LB 289, § 27.

66-1528 Person receiving conveyance; action; not barred.

Nothing in the Petroleum Release Remedial Action Act shall be construed to bar a common-law, statutory, or any other cause of action which may be maintained against a responsible person by a private person who, subsequent to a release, received a conveyance of any right, title, or interest in the parcel of real property on which such release occurred.

Source: Laws 1989, LB 289, § 28.

66-1529 Reimbursement; assignment; authorized.

Nothing in the Petroleum Release Remedial Action Act shall be construed to prohibit a responsible person from assigning to a third party any right, title, or interest which the responsible person may have in and to the proceeds from reimbursement for remedial action. Such third party may be a designated representative for the purposes of the act.

Source: Laws 1989, LB 289, § 29.

66-1529.01 Remedial action; fixtures and tangible personal property; treatment.

(1) The department shall reimburse the responsible person from the fund for damages to fixtures and costs of tangible personal property related to the remedial action as set forth in subsections (2) and (3) of this section.

(2) The responsible person shall be reimbursed from the fund for reasonable repair or replacement costs approved in a remedial action plan for fixtures

which are damaged by the remedial action, except in the case of intentional acts or gross negligence by the responsible person or his or her agents. Costs for removal of fixtures are eligible for reimbursement at the time of site closure if such fixtures were a part of the approved remedial action. All fixtures reimbursed by the fund which are attached to real property are owned by the responsible person or the property owner, if different from the responsible person.

(3) The responsible person shall be reimbursed from the fund for the value of tangible personal property purchased by the responsible person and used in the remedial action. Reimbursement shall be according to the current schedule of reasonable rates made available by the department pursuant to section 66-1518. All tangible personal property reimbursed by the fund is owned by the state. The department may use tangible personal property reimbursed by the fund in other remedial actions, store such property until needed, maintain the property, or sell or dispose of such property in a manner beneficial to the fund. Any proceeds from the sale or disposal of such property shall be remitted to the State Treasurer for credit to the fund.

Source: Laws 1991, LB 409, § 18; Laws 1996, LB 1226, § 12; Laws 1998, LB 1161, § 34.

66-1529.02 Remedial actions by department; third-party claims; recovery of expenses.

(1) The department may undertake remedial actions in response to a release first reported after July 17, 1983, and on or before June 30, 2020, with money available in the fund if:

- (a) The responsible person cannot be identified or located;
- (b) An identified responsible person cannot or will not comply with the remedial action requirements; or
- (c) Immediate remedial action is necessary, as determined by the Director of Environmental Quality, to protect human health or the environment.

(2) The department may pay the costs of a third-party claim meeting the requirements of subdivision (2)(f) of section 66-1525 with money available in the fund if the responsible person cannot or will not pay the third-party claim.

(3) Reimbursement for any damages caused by the department or a person acting at the department's direction while investigating or inspecting or during remedial action on property other than property on which a release or suspected release has occurred shall be considered as part of the cost of remedial action involving the site where the release or suspected release occurred. The costs shall be reimbursed from money available in the fund. If such reimbursement is deemed inadequate by the party claiming the damages, the party's claim for damages caused by the department shall be filed as provided in section 76-705.

(4) All expenses paid from the fund under this section, court costs, and attorney's fees may be recovered in a civil action in the district court of Lancaster County. The action may be brought by the county attorney or Attorney General at the request of the director against the responsible person. All recovered expenses shall be deposited into the fund.

Source: Laws 1991, LB 409, § 19; Laws 1993, LB 3, § 41; Laws 1993, LB 237, § 4; Laws 1998, LB 1161, § 35; Laws 1999, LB 270, § 5; Laws 2001, LB 461, § 6; Laws 2004, LB 962, § 108; Laws 2008, LB1145, § 4; Laws 2012, LB873, § 4; Laws 2016, LB887, § 4.

66-1530 Department; federal funding; duty.

The department shall cooperate in any action necessary to obtain federal funding to carry out the Petroleum Release Remedial Action Act.

Source: Laws 1989, LB 289, § 30.

66-1531 Claim under State Miscellaneous Claims Act authorized; procedure; limitations.

A person, other than a responsible person, may file a claim with the State Claims Board under the State Miscellaneous Claims Act for (1) property damage caused by a release and (2) reasonable costs directly incurred due to uninhabitability of a dwelling or unfitness of a water supply caused by a release. For purposes of claims made under this section, property damage means damage to real estate or water well contaminated as a result of a release. Claims approved under this section shall be approved on the basis of merit and eligibility as set forth in section 66-1525. Claims approved under this section shall be reduced by any third-party claim, as defined in section 66-1515.01, for the same damage. A claim approved under this section shall not be considered to be from a collateral source in a judicial proceeding for the same damage. Any claim under this section shall be paid from the Petroleum Release Remedial Action Cash Fund within sixty days after the claim is approved pursuant to section 81-8,300, subject to section 66-1523. A claim approved under this section shall not exceed two hundred thousand dollars and the total claims paid for property damage shall not exceed eight hundred thousand dollars per occurrence.

Source: Laws 1998, LB 1161, § 25.

Cross References

State Miscellaneous Claims Act, see section 81-8,294.

66-1532 Repealed. Laws 2010, LB 832, § 3.

ARTICLE 16

PROPANE EDUCATION AND RESEARCH ACT

Section	
66-1601.	Act, how cited.
66-1602.	Purposes of act.
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66-1625.	Price of propane; legislative intent.
66-1626.	Collection of fees.
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66-1601 Act, how cited.

Sections 66-1601 to 66-1627 shall be known and may be cited as the Propane Education and Research Act.

Source: Laws 1998, LB 699, § 1.

66-1602 Purposes of act.

The purposes of the Propane Education and Research Act are (1) to authorize the creation of an industry-financed entity which will enable the Nebraska propane industry to educate the public and industry employees about proper safety and procedures in the storage, handling, transportation, and use of propane in any of its traditional residential, commercial, recreational, or agricultural applications and (2) to support efforts to increase the efficiency and value of propane energy service to the industry and its customers.

Source: Laws 1998, LB 699, § 2.

66-1603 Definitions, where found.

For purposes of the Propane Education and Research Act, the definitions found in sections 66-1604 to 66-1616 shall be used.

Source: Laws 1998, LB 699, § 3.

66-1604 Bulk, defined.

Bulk means quantities of more than five thousand gallons.

Source: Laws 1998, LB 699, § 4.

66-1605 Council, defined.

Council means the Propane Education and Research Council established under sections 66-1617 and 66-1618.

Source: Laws 1998, LB 699, § 5.

66-1606 Education, defined.

Education means any action which provides information, instruction, or safety guidelines about propane, propane equipment, mechanical and technical practices, and uses of propane to propane consumers or industry employees.

Source: Laws 1998, LB 699, § 6.

66-1607 Industry, defined.

Industry means those persons involved in the production, transportation, and sale of propane and in the manufacture and distribution of propane utilization equipment.

Source: Laws 1998, LB 699, § 7.

66-1608 Industry trade association, defined.

Industry trade association means an organization which represents a segment of the industry and which is exempt from tax under section 501(c)(3) or (6) of the Internal Revenue Code.

Source: Laws 1998, LB 699, § 8.

66-1609 Manufacturer and distributor of liquefied petroleum gas equipment, defined.

Manufacturer and distributor of liquefied petroleum gas equipment means any person engaged in manufacturing, assembling, and marketing appliances, containers, and products used in the liquefied petroleum gas industry and any person in the wholesale marketing of appliances, containers, and products used in the liquefied petroleum gas industry.

Source: Laws 1998, LB 699, § 9.

66-1610 Odorized propane, defined.

Odorized propane means propane with odorant added.

Source: Laws 1998, LB 699, § 10.

66-1611 Person, defined.

Person means any: Individual; partnership; limited liability company; association; public or private corporation; trustee; receiver; assignee; agent; municipality or other governmental subdivision; public agency; other legal entity; or any officer or governing or managing body of any public or private corporation, municipality, governmental subdivision, public agency, or other legal entity.

Source: Laws 1998, LB 699, § 11.

66-1612 Propane, defined.

Propane means propane, butane, mixtures, and liquefied petroleum gas as defined by the National Fire Protection Association Standard 58 for the Storage and Handling of Liquefied Petroleum Gases the chemical composition of which is predominantly C₃H₈, whether recovered from natural gas or crude oil.

Source: Laws 1998, LB 699, § 12.

66-1613 Qualified industry organization, defined.

Qualified industry organization means any organization or industry trade association the members of which are engaged in the sale or distribution of odorized propane to the ultimate consumer or the sale of propane utilization equipment to the ultimate consumer.

Source: Laws 1998, LB 699, § 13.

66-1614 Research, defined.

Research means any type of study, investigation, or other activity performed by a qualified public or private research group for the purpose of advancing and improving the existing technology related to the propane industry, including the development of increased efficiency of propane use, of enhancing the safety of propane and propane utilization equipment, or of furthering the development of such information and products.

Source: Laws 1998, LB 699, § 14.

66-1615 Retail marketer, defined.

Retail marketer means any person with bulk propane storage engaged in the sale of odorized propane to the ultimate consumer or to retail propane dispensers within Nebraska.

Source: Laws 1998, LB 699, § 15.

66-1616 Wholesaler, supplier, or importer, defined.

Wholesaler, supplier, or importer means the owner of the propane at the time it is first delivered into Nebraska regardless of the state where production occurs, with ownership of the propane determined by the freight on board designation.

Source: Laws 1998, LB 699, § 16.

66-1617 Propane Education and Research Council; referendum for creation; approval.

(1) One or more qualified industry organizations, which in the aggregate represent at least thirty-five percent of the total volume of odorized propane sold at retail in the State of Nebraska, may conduct a referendum among retail marketers for the creation of the Propane Education and Research Council. The organization conducting the referendum shall pay the cost of the referendum. If the council is established, the council shall reimburse the organization for the costs incurred by the independent accounting firm under subsection (2) of this section and any other costs for the referendum incurred which the council finds reasonable and necessary.

(2) The referendum shall be conducted by an independent accounting firm selected by the qualified industry organization initiating the referendum. Each retail marketer voting in the referendum shall be allowed one vote for each gallon of retail odorized propane sold by such retail marketer within the State of Nebraska in the previous calendar year or other specified representative period. All persons voting in the referendum shall certify to the independent accounting firm the volume of odorized propane represented by their votes. This information shall be treated as confidential information. Only vote totals shall be made public.

(3) Upon approval by retail marketers representing a majority of the votes cast in the referendum, the qualified industry organization initiating the referendum shall certify the vote to the Governor, the Propane Education and Research Council shall be created, and its members shall be appointed by the Governor as provided in section 66-1618.

Source: Laws 1998, LB 699, § 17.

66-1618 Council; members; appointment; terms.

(1) The council shall be appointed by the Governor within sixty days after the date the vote is certified to the Governor pursuant to section 66-1617. The council shall consist of nine members, including four members representing retail marketers, one member representing wholesalers, suppliers, and importers, one member representing manufacturers and distributors of liquefied petroleum gas equipment, one member representing the academic or propane research community, one propane user or consumer, and the State Fire Marshal or his or her designee. Other than the State Fire Marshal or his or her designee and the representatives of the research community and consumers, members shall be full-time employees or owners of businesses in the industry or representatives of agriculture cooperatives. Only one person from any company or an affiliated company may serve on the council at a time. All members shall be Nebraska residents, except that the members representing wholesalers, suppliers, and importers and manufacturers and distributors of liquefied petroleum gas equipment may be residents of other states.

(2) Members of the council shall serve terms of three years, except that, of the initial members, three shall be appointed for terms of one year and three shall be appointed for terms of two years. Members filling unexpired terms shall be appointed in a manner consistent with this section. Members may serve a maximum of two consecutive full terms, except that members filling unexpired terms may serve a maximum of seven consecutive years. Members filling unexpired terms shall be appointed in a manner consistent with this section. Former members may be reappointed if they have not been members for a period of two years.

Source: Laws 1998, LB 699, § 18; Laws 2008, LB805, § 1.

66-1619 Council; powers and duties; rules and regulations.

(1) The council shall provide rules and regulations to carry out its responsibilities under the Propane Education and Research Act.

(2) The council may enter into contracts with, use facilities and equipment of, or employ the personnel of a qualified industry organization in carrying out the council's responsibilities under the act.

(3) The council shall protect the handling of council funds through fidelity bonds.

(4) The administrative costs of operating the council shall not exceed twenty percent of the funds collected pursuant to section 66-1621 in any fiscal year.

(5) The council shall operate in accordance with the Open Meetings Act.

(6) At the beginning of each fiscal year, the council shall prepare a budget plan which includes the estimated costs of all programs, projects, and contracts. The council shall provide an opportunity for public comment on the budget. The council shall prepare and make available to the public an annual report detailing the activities of the council in the previous year, those planned for the coming year, and the costs related to the activities.

(7) The council shall keep minutes, books, and records that clearly reflect all of the acts and transactions of the council. The books of the council shall be audited by a certified public accountant at least once each fiscal year and at such other times as the council may designate. Copies of the audit shall be provided to the executive director, if one is appointed by the council, to all

members of the council, to the Clerk of the Legislature, and to any other member of the industry upon request.

(8) The council shall issue notice of meetings and shall require reports on the activities of the committees and subcommittees and on compliance, violations, and complaints regarding the implementation of the Propane Education and Research Act.

Source: Laws 1998, LB 699, § 19; Laws 2004, LB 821, § 15.

Cross References

Open Meetings Act, see section 84-1407.

66-1620 Council; implement act; use of funds.

The council shall develop programs and projects and enter into contracts or agreements for implementing the Propane Education and Research Act, including, but not limited to, programs to enhance consumer and employee safety and training, programs to provide research and development to improve existing propane technology, programs to increase efficiency of propane use, and any other programs to educate the public about the environmental and safety aspects of propane. At least seventy percent of the funds collected pursuant to section 66-1621 shall be used for education or for improvement of propane utilization safety equipment technology. No funds shall be used for the sole purpose of advertising propane or propane utilization equipment. Safety issues shall receive first priority in the development of all programs and projects funded by the council. The council shall provide for the payment of the costs for the programs and projects with funds collected pursuant to such section and shall coordinate its activities with qualified industry organizations to provide efficient delivery of services and to avoid unnecessary costs or duplication of activities.

Source: Laws 1998, LB 699, § 20.

66-1621 Propane education and research fee; collection and use.

(1) The council may levy a propane education and research fee on odorized propane sold in Nebraska to fund the Propane Education and Research Act. The fee shall not exceed two-tenths of one cent per gallon. The fee shall be calculated by multiplying the fee rate by the number of net gallons of odorized propane on a bill of lading, an invoice, or a shipping document of the wholesaler, supplier, or importer who first sells or offers for sale odorized propane or uses odorized propane in this state, who shall pay the fee. If the quantity specified in the bill of lading, invoice, or shipping document is listed in units other than gallons, the wholesaler, supplier, or importer shall convert those units to gallons, using conversion tables approved by the council, prior to remitting the fee to the council.

Fee payments shall be remitted to the council on a regular basis as established by the council. Nonodorized propane shall not be subject to the fee until odorized. The council may establish a late payment charge and provide for interest, at a rate equal to the maximum rate of interest allowed per annum under section 45-104.01 as such rate may from time to time be adjusted by the Legislature, to be imposed on any person who fails to remit any amount due under the act.

(2) Any funds which are due to the State of Nebraska and collected from a national assessment levied on propane shall be designated and accrue to the benefit of the council and shall be spent in accordance with the federal Propane Education and Research Act of 1996.

(3) Funds collected by the council shall not be used in any manner for influencing legislation or for political campaign contributions.

Source: Laws 1998, LB 699, § 21.

66-1622 Act; how construed.

The Propane Education and Research Act does not preempt or supersede any other program relating to propane safety or education which has been organized and is operating under state law.

Source: Laws 1998, LB 699, § 22.

66-1623 Retail marketers; liability insurance; employees; training requirements; violation; penalty.

All retail marketers of retail propane in Nebraska shall carry minimum liability insurance coverage of at least two million dollars, with proof of insurance provided to the State Fire Marshal. All persons employed in the installation or service of any propane system shall fully comply with training requirements provided in applicable sections governing the sale of propane as set forth by the National Fire Protection Association. Applicable requirements for guidelines as set forth by the National Fire Protection Association shall be enforced by the office of the State Fire Marshal.

Violation of this section shall subject the violator to a civil penalty of not less than one hundred dollars per day and not more than one thousand dollars per day. In case of a continuing violation, each day constitutes a separate offense. The amount of the penalty shall be based on the degree and extent of the violation. The Attorney General or each county attorney to whom the State Fire Marshal reports a violation shall institute appropriate proceedings without delay to assure compliance with this section.

Source: Laws 1998, LB 699, § 23.

66-1624 Council; suspension or termination; referendum.

(1) The council may on its own initiative and shall upon the petition of retail marketers representing at least thirty-five percent, as determined by the council, of the total volume of odorized propane sold at retail in the State of Nebraska hold a referendum to be conducted by an independent accounting firm selected by the council to determine whether the council should be suspended or terminated. The council shall pay the costs of the referendum under this section.

(2) The council shall be suspended or terminated if suspension or termination is approved by retail marketers representing more than fifty percent, as determined by the council, of the total volume of odorized propane sold at retail in the State of Nebraska.

Source: Laws 1998, LB 699, § 24.

66-1625 Price of propane; legislative intent.

It is the intent of the Legislature that the price of propane shall always be determined by market forces. The council shall take no action to interfere in any manner with the free market process.

Source: Laws 1998, LB 699, § 25.

66-1626 Collection of fees.

Any person who unreasonably fails or refuses to pay any fee due under the Propane Education and Research Act may be subject to legal action by the council to recover the fees due, plus interest and costs.

Source: Laws 1998, LB 699, § 26.

66-1627 Venue.

The district court or county court of the county in which the violation occurs or in which the person required to pay the fee under section 66-1621 resides shall have jurisdiction to enjoin violations of the Propane Education and Research Act or the rules and regulations provided for under the act, as well as jurisdiction for civil actions to recover fees due, plus interest and costs. If neither of the jurisdictional considerations in this section applies, the district court of Lancaster County shall have jurisdiction.

Source: Laws 1998, LB 699, § 27.

ARTICLE 17

BIOPOWER STEERING COMMITTEE

Section
66-1701. Repealed. Laws 2009, LB 246, § 2.

66-1701 Repealed. Laws 2009, LB 246, § 2.

ARTICLE 18

STATE NATURAL GAS REGULATION ACT

Section
66-1801. Act, how cited.
66-1802. Terms, defined.
66-1803. Exemptions from act; conditions; action to determine.
66-1804. Commission; powers; act, how construed.
66-1805. Rules and regulations; commission; additional powers; Attorney General; duties.
66-1806. Jurisdictional utilities; filings required.
66-1807. Commission; powers; how construed.
66-1808. Rate changes; term or condition of service; when effective.
66-1809. Commission; investigations authorized; hearing; powers.
66-1810. Service to high-volume ratepayers, agricultural ratepayers, and interruptible ratepayers; jurisdictional utility; powers.
66-1811. Complaint; investigation; hearing; where held; commission; powers.
66-1812. Rate proceeding; intervention by county or city.
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Section
66-1868. Rural infrastructure development; rural infrastructure surcharge tariff; filing in additional filings; agreement; contents; gas supply cost adjustment tariff; collection; refund; billing.

66-1801 Act, how cited.

Sections 66-1801 to 66-1868 shall be known and may be cited as the State Natural Gas Regulation Act.

Source: Laws 2003, LB 790, § 1; Laws 2006, LB 1249, § 2; Laws 2009, LB658, § 1; Laws 2012, LB1115, § 9.

66-1802 Terms, defined.

For purposes of the State Natural Gas Regulation Act:

(1) Agricultural ratepayer means a ratepayer whose usage of natural gas does not qualify the ratepayer as a high-volume ratepayer and (a) whose principal use of natural gas is for agricultural crop or livestock production, irrigation pumping, crop drying, or animal feed or food production or (b) whose service is provided on an interruptible basis;

(2) Appropriate pretax revenue means the revenue necessary to produce net operating income equal to:

(a) The jurisdictional utility's weighted cost of capital multiplied by the net original cost of eligible infrastructure system replacements, including recognition of accumulated deferred income taxes and accumulated depreciation associated with eligible infrastructure system replacements which are included in an infrastructure system replacement cost recovery charge;

(b) Recovery of state, federal, and local income or excise taxes applicable to such income; and

(c) Recovery of depreciation expenses;

(3) BTU means the amount of energy necessary to raise the temperature of one pound of water one degree Fahrenheit;

(4) City means any city or village in the State of Nebraska;

(5) Commission means the Public Service Commission;

(6) Eligible infrastructure system replacement means jurisdictional utility plant projects that:

(a) Do not increase revenue by directly connecting the infrastructure system replacement to new customers;

(b) Are in service and used and required to be used;

(c) Were not included in the jurisdictional utility's rate base in its most recent general rate proceeding; and

(d) May enhance the capacity of the system but are only eligible for infrastructure system replacement cost recovery to the extent the jurisdictional utility plant project constitutes a replacement of existing infrastructure;

(7) Gas gathering system means a natural gas pipeline system used primarily for transporting natural gas from a wellhead, or from a metering point for natural gas produced by one or more wells, to a point of entry into a main transmission line;

(8) General rate filing means any filing which requests changes in overall revenue requirements for a jurisdictional utility but does not include a filing for an infrastructure system replacement cost recovery charge;

(9) High-volume ratepayer means a ratepayer whose natural gas requirements equal or exceed five hundred therms per day as determined by average daily consumption;

(10) Infrastructure system replacement cost recovery charge revenue means revenue produced through an infrastructure system replacement cost recovery charge exclusive of revenue from all other rates and charges;

(11) Interstate pipeline means any corporation, company, individual, or association of persons or their trustees, lessees, or receivers engaged in natural gas transportation subject to the jurisdiction of the Federal Energy Regulatory Commission under the federal Natural Gas Act, 15 U.S.C. 717 et seq., as such act existed on January 1, 2003;

(12) Intrastate natural gas utility business means all of that portion of the business of a natural gas public utility over which the commission has jurisdiction under the State Natural Gas Regulation Act;

(13) Jurisdictional utility means a natural gas public utility subject to the jurisdiction of the commission. Jurisdictional utility does not mean a natural gas public utility which is not subject to the jurisdiction of the commission pursuant to section 66-1803;

(14) Jurisdictional utility plant projects means only the following:

(a) Mains, valves, service lines, regulator stations, vaults, and other pipeline system components installed to comply with state or federal safety requirements as replacements for existing facilities;

(b) Main relining projects, service line insertion projects, joint encapsulation projects, and other similar projects extending the useful life or enhancing the integrity of pipeline system components undertaken to comply with state or federal safety requirements; and

(c) Facility relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United States, this state, a political subdivision of this state, or another entity having the power of eminent domain, if the costs related to such relocations have not been reimbursed to the jurisdictional utility;

(15) Natural gas public utility means any corporation, company, individual, or association of persons or their trustees, lessees, or receivers that owns, controls, operates, or manages, except for private use, any equipment, plant, or machinery, or any part thereof, for the conveyance of natural gas through pipelines in or through any part of this state. Natural gas public utility does not mean a natural gas utility owned or operated by a city or a metropolitan utilities district. Natural gas public utility does not include any activity of an otherwise jurisdictional corporation, company, individual, or association of persons or their trustees, lessees, or receivers as to the marketing or sale of compressed natural gas for end use as motor vehicle fuel. Natural gas public utility does not include any gas gathering system or interstate pipeline;

(16) Rate means every compensation, charge, fare, toll, tariff, rental, and classification, or any of them, demanded, observed, charged, or collected by any jurisdictional utility for any service;

(17) Rate area means the geographic area within the state served by a single natural gas public utility through a common pipeline system from the same natural gas supply source within the common system for which the utility has similar costs for serving ratepayers of the same class; and

(18) Therm is equivalent to one hundred thousand BTUs.

Source: Laws 2003, LB 790, § 2; Laws 2009, LB658, § 2.

66-1803 Exemptions from act; conditions; action to determine.

(1) A natural gas public utility shall not be subject to the jurisdiction of the commission or the requirements of the State Natural Gas Regulation Act if (a) it distributes, sells, or transports natural gas or provides natural gas services to persons receiving services through fewer than seven thousand five hundred meters in the state, (b) it has entered into an agreement with a city in which it distributes, sells, or transports natural gas or provides natural gas services that establishes the terms and conditions of the service and the rates to be paid and such agreement is authorized by an ordinance in effect at the time of the distribution, sale, or transportation of natural gas or provision of natural gas services, and (c) the terms and conditions of such agreement are applicable to customers, if any, served by the natural gas public utility outside the jurisdiction of the city.

(2) Any ratepayer or city served by a natural gas public utility pursuant to subsection (1) of this section, the commission, the public advocate, or the natural gas public utility providing service pursuant to subsection (1) of this section may pursue an action in the district court of the county in which such utility operates for a determination as to whether or not such utility is subject to the jurisdiction of the commission and the requirements of the act by reason of the failure to meet one or more of the qualifying factors set out in subsection (1) of this section.

Source: Laws 2003, LB 790, § 3.

66-1804 Commission; powers; act, how construed.

(1) The commission shall have full power, authority, and jurisdiction to regulate natural gas public utilities and may do all things necessary and convenient for the exercise of such power, authority, and jurisdiction. Except as provided in the Nebraska Natural Gas Pipeline Safety Act of 1969, and notwithstanding any other provision of law, such power, authority, and jurisdiction shall extend to, but not be limited to, all matters encompassed within the State Natural Gas Regulation Act.

(2) The State Natural Gas Regulation Act and all grants of power, authority, and jurisdiction in the act made to the commission shall be liberally construed, and all incidental powers necessary to carry into effect the provisions of the act are expressly granted to and conferred upon the commission.

Source: Laws 2003, LB 790, § 4; Laws 2006, LB 1249, § 3.

Cross References

Nebraska Natural Gas Pipeline Safety Act of 1969, see section 81-552.

66-1805 Rules and regulations; commission; additional powers; Attorney General; duties.

(1) The commission may adopt and promulgate rules and regulations to govern its proceedings and with regard to the mode and manner of all investigations, tests, audits, inspections, filings, and hearings. The commission may adopt and promulgate rules and regulations governing matters in the State Natural Gas Regulation Act and in furtherance of the act, including, but not limited to:

- (a) Procedures and requirements for applications for rate and tariff changes;
- (b) Requirements for jurisdictional utilities to maintain and make available to the public and the commission records and information;
- (c) Requirements and procedures regarding customer billings and meter readings;
- (d) Requirements regarding availability of meter tests;
- (e) Requirements regarding billing adjustments for meter errors;
- (f) Procedures and requirements for handling customer disputes and complaints;
- (g) Procedures and requirements regarding temporary service, changes in location of service, and service interruptions;
- (h) Standards and procedures to ensure nondiscriminatory credit policies;
- (i) Procedures, requirements, and record-keeping guidelines regarding deposit policies;
- (j) Procedures, requirements, and record-keeping guidelines regarding customer refunds;
- (k) Policies for refusal of natural gas service;
- (l) Policies for disconnection and transfer of natural gas service;
- (m) Customer payment plans for delinquent bills;
- (n) Requirements regarding advertising;
- (o) The assessment and taxation of costs and fees;
- (p) Procedures, requirements, and policies regarding the preservation, confidentiality, and disclosure of records in the possession of the commission; and
- (q) Reporting requirements for transactions involving affiliated interests of jurisdictional utilities.

(2) The commission may:

- (a) Confer with officers of other states and officers of the United States on any matter pertaining to the commission's official duties;
- (b) Enter into and establish fair and equitable cooperative agreements or contracts with or act as an agent or licensee for the United States, or any official, agency, or instrumentality thereof, or any similar commission of another state, for the purpose of carrying out the commission's duties and to that end receive and disburse any contributions, grants, or other financial assistance as a result of or pursuant to such agreements or contracts; and
- (c) Make joint investigations, hold joint hearings within or outside the state, and issue joint or concurrent orders in conjunction or concurrence with such official, agency, instrumentality, or commission.

(3) The Attorney General, when requested, shall give the commission such counsel and advice as the commission may from time to time require. The Attorney General shall aid and assist the commission in all judicial hearings,

suits, and proceedings in which the commission requests the Attorney General's assistance.

Source: Laws 2003, LB 790, § 5.

66-1806 Jurisdictional utilities; filings required.

Every jurisdictional utility shall publish and file with the commission copies of all schedules of rates and shall furnish the commission copies of all terms and conditions of service and contracts between jurisdictional utilities pertaining to any and all jurisdictional services to be rendered by such jurisdictional utilities. The commission may adopt and promulgate reasonable rules and regulations regarding the form and filing of all schedules of rates and all rules and regulations of such jurisdictional utility, including such protection of confidentiality as requested by the jurisdictional utility, and the jurisdictional utility's suppliers and ratepayers, for contracts entered into by them, and as the commission determines reasonable and appropriate.

Source: Laws 2003, LB 790, § 6.

66-1807 Commission; powers; how construed.

Except as otherwise provided in the State Natural Gas Regulation Act, all orders, rules, regulations, practices, services, rates, charges, classifications, and tolls fixed by the commission shall be prima facie reasonable unless or until changed or modified by the commission or in pursuance of proceedings instituted in court as provided in the act.

Source: Laws 2003, LB 790, § 7.

66-1808 Rate changes; term or condition of service; when effective.

(1) The provisions of this section do not apply to general rate filings.

(2) Unless the commission otherwise orders, no jurisdictional utility shall make effective any changed rate or any term or condition of service pertaining to the service or rates of such utility, except by filing the same with the commission at least thirty days prior to the proposed effective date. The commission, for good cause, may allow such changed rate or any term or condition of service pertaining to the service or rates of any such utility, to become effective on less than thirty days' notice. If the commission allows a change to become effective on less than thirty days' notice, the effective date of the allowed change shall be the date established in the commission order approving such change or the date of the order if no effective date is otherwise established. Any such proposed change shall be shown by filing with the commission a schedule showing the changes, and such changes shall be plainly indicated by proper reference marks in amendments or supplements to existing tariffs, schedules, or classifications, or in new issues thereof.

(3) Whenever any jurisdictional utility files with the commission the changes desired to be made and put in force by such utility, the commission, either upon complaint or upon its own motion, may give notice and hold a hearing upon such proposed changes. Pending such hearing, the commission may suspend the operation of such change and defer the effective date of such change in rate or any term or condition of service pertaining to the service or rates of any such utility, by delivering to such utility a statement in writing of its reasons for such

suspension. The commission may not suspend a tariff filed pursuant to section 66-1868.

(4) The commission shall not delay the effective date of the proposed change in rate or any term or condition of service pertaining to the service or rates of any such jurisdictional utility, more than one hundred eighty days beyond the date the utility filed its application requesting the proposed change. If the commission does not suspend the proposed change within thirty days after the date the same is filed by the utility, such proposed change shall be deemed approved by the commission and shall take effect on the proposed effective date. If the commission has not issued a final order on the proposed change in any rate or any term or condition of service pertaining to the service or rates of any such utility, within one hundred eighty days after the date the utility files its application requesting the proposed change, then the proposed change shall be deemed approved by the commission and the proposed change shall be effective immediately, except that (a) in any proceeding initiated as a result of a filing by a utility of new or changed rates or terms and conditions of service, the commission shall, within thirty days of the receipt of such filing, review the applications, documents, and submissions made with such filing to determine whether or not they conform to the minimum requirements of the commission regarding such filings as established by applicable rule, regulation, or commission order. If such applications, documents, or submissions fail to substantially conform with such requirements, they will be deemed defective and the filing shall not be deemed to have been made until such applications, documents, and submissions are determined to be in conformity by the commission with minimum standards, and (b) nothing in this subsection shall preclude the jurisdictional utility and the commission from agreeing to a waiver or an extension of the one-hundred-eighty-day period.

(5) Except as provided in subsection (4) of this section, no change shall be made in any rate or in any term or condition of service pertaining to the service or rates of any such jurisdictional utility, without the consent of the commission. Within thirty days after such changes have been authorized by the commission or become effective as provided in subsection (4) of this section, copies of all tariffs, schedules, and classifications, and all terms or conditions of service, except those determined to be confidential under rules and regulations adopted by the commission, shall be available for public inspection in every office and facility open to the general public of such jurisdictional utility in this state.

(6) Except as to the time limits prescribed in subsection (4) of this section, proceedings under this section shall be conducted in accordance with rules and regulations adopted and promulgated pursuant to section 75-110.

Source: Laws 2003, LB 790, § 8; Laws 2012, LB1115, § 11.

66-1809 Commission; investigations authorized; hearing; powers.

(1) The commission, upon its own initiative, may investigate all schedules of rates, contracts, and terms and conditions of service of jurisdictional utilities. If after notice, investigation, and hearing the commission finds that such rates or terms and conditions of service are unjust, unreasonable, unjustly discriminatory, or unduly preferential, the commission shall have the power to establish and order substituted therefor such rates and such terms and conditions of service as are just and reasonable, effective as of the date of the order.

(2) If after investigation and hearing it is found that any term or condition of service, measurement, practice, act, or service complained of is unjust, unreasonable, unduly preferential, unjustly discriminatory, or otherwise in violation of the State Natural Gas Regulation Act or of the orders of the commission or if it is found that any service is inadequate or that any reasonable service cannot be obtained, the commission may substitute therefor, effective as of the date of the order, such other terms or conditions of service, measurements, practices, acts, or service and make such order respecting any such changes in such terms and conditions of service, measurements, practices, acts, or service as are just and reasonable. When, in the judgment of the commission, public necessity and convenience require, the commission may establish just and reasonable rates, charges, or privileges, but all such rates, charges, and privileges shall be open to all users of a like kind of service under similar circumstances and conditions. Hearings shall be conducted in accordance with rules and regulations adopted and promulgated pursuant to section 75-110.

Source: Laws 2003, LB 790, § 9.

66-1810 Service to high-volume ratepayers, agricultural ratepayers, and interruptible ratepayers; jurisdictional utility; powers.

(1) A jurisdictional utility may provide service at negotiated rates, contracts, and terms and conditions of service under contract to high-volume ratepayers. Service under the contracts shall be provided on such terms and conditions and for such rates or charges as the jurisdictional utility and the high-volume ratepayer agree, without regard to any rates, tolls, tariffs, or charges the jurisdictional utility may have filed with the commission. Upon the request of the commission, the jurisdictional utility shall file such contracts with the commission. The contracts are not public records within the meaning of sections 84-712 to 84-712.09 and their disclosure to any other person or corporation for any purpose is expressly prohibited, except that they may be used by the commission in any investigation or proceeding. Except as provided in this subsection, high-volume ratepayers shall not be subject to the jurisdiction of the commission.

(2) A jurisdictional utility may change any rate or other charge demanded or received from or terms and conditions applicable to its agricultural ratepayers and interruptible ratepayers not otherwise qualifying as high-volume ratepayers, upon notice to the commission and to the public. The commission may not suspend such rate or charge filed by a jurisdictional utility, except that the commission, after hearing and order, may change any such rate or other charge demanded or received from a jurisdictional utility's agricultural ratepayers upon complaint effective as of the date of the order, if such rate or other charge is found in such complaint proceeding to be unduly preferential or unjustly discriminatory. The provisions of this subsection apply notwithstanding any provision in the State Natural Gas Regulation Act to the contrary.

Source: Laws 2003, LB 790, § 10.

66-1811 Complaint; investigation; hearing; where held; commission; powers.

(1) Upon a complaint in writing made against any jurisdictional utility (a) that any rates or terms and conditions of service of such utility are in any respect unreasonable, unjust, unjustly discriminatory, or unduly preferential, (b) that any terms and conditions of service or act whatsoever affecting or

relating to any service performed or to be performed by such utility for the public, is in any respect unreasonable, unjust, unjustly discriminatory, or unduly preferential, or (c) that any service performed or to be performed by such utility for the public is inadequate, insufficient, or cannot be obtained, the commission may proceed, with or without notice, to make such investigation as it deems necessary.

(2) No order changing such rates, terms and conditions, or acts complained of shall be made or entered by the commission without a formal public hearing in accordance with rules and regulations adopted and promulgated pursuant to section 75-110, of which due notice shall be given by the commission to such utility or to such complainant or complainants, if any.

(3) The commission shall have power to require jurisdictional utilities to make such improvements and do such acts as are or may be required by law to be done by any such utility, including refunds as authorized by law.

(4) The commission may hold public hearings in the area being impacted by any rate investigation or rate increase being considered by the commission to hear public comments.

(5) If after investigation and hearing the rates or terms and conditions of service of any jurisdictional utility are found unjust, unreasonable, unjustly discriminatory, or unduly preferential, or in any way in violation of the provisions of the State Natural Gas Regulation Act or of any of the laws of the State of Nebraska, the commission shall have the power to establish, and to order substituted therefor, to be effective as of the date of the order, such rates or terms and conditions of service as the commission determines to be just, reasonable, and necessary. If it is found that any term or condition of service, practice, or act relating to any service performed or to be performed by such utility is in any respect unreasonable, unjust, insufficient, unjustly discriminatory, or unduly preferential, or otherwise in violation of any of the provisions of the act or of any of the laws of the State of Nebraska, the commission may substitute therefor by order such other terms and conditions of service, practice, service, or act as it determines to be just, reasonable, and necessary, to be effective as of the date of the order.

Source: Laws 2003, LB 790, § 11.

66-1812 Rate proceeding; intervention by county or city.

On timely filing of a petition for intervention, any county or city may intervene, on behalf of ratepayers located within their respective boundaries, in any rate proceeding before the commission that involves the rates of a jurisdictional utility serving ratepayers located within their respective boundaries.

Source: Laws 2003, LB 790, § 12.

66-1813 Proceedings for review; parties; rights and privileges.

In proceedings for review of an action of the commission, the commission and any jurisdictional utility which participated in the agency proceeding and could be bound by the review shall be parties to the proceedings and shall have all rights and privileges granted by the State Natural Gas Regulation Act to any other party to such proceedings.

Source: Laws 2003, LB 790, § 13.

66-1814 Action of commission; review.

Any action of the commission pursuant to the State Natural Gas Regulation Act is subject to review in accordance with section 75-136.

Source: Laws 2003, LB 790, § 14.

66-1815 Jurisdictional utility; reports; failure to file; penalty.

(1) Every jurisdictional utility shall file with the commission an annual report and such monthly or other regular reports, or special reports, and such other information as the commission may require.

(2) Any jurisdictional utility which fails, neglects, or refuses to file with the commission any annual reports, statements, monthly or regular reports, or special reports required by the commission pursuant to the State Natural Gas Regulation Act or rules and regulations of the commission shall be subject to a civil penalty of not more than five hundred dollars.

Source: Laws 2003, LB 790, § 15.

66-1816 Jurisdictional utility; ownership of competitor; prohibited; when.

No jurisdictional utility shall purchase or acquire, take, or hold any part of the voting stock, bonds, or other forms of indebtedness of any competing jurisdictional utility, either as owner or pledgee, unless authorized by the commission.

Source: Laws 2003, LB 790, § 16.

66-1817 Completion and dedication of property.

(1) Any jurisdictional utility property may be deemed to be completed and dedicated to commercial service if construction of the property will be commenced and completed in one year or less.

(2) The commission may determine that property of a jurisdictional utility which has not been completed and dedicated to commercial service may be deemed to be used and useful in the utility's service to the public.

Source: Laws 2003, LB 790, § 17.

66-1818 Commission; examinations and audits; authorized.

The commission shall have authority to examine and audit all accounts of jurisdictional utilities, and all items shall be allocated to the accounts prescribed by the commission. Every jurisdictional utility shall be required to keep and render its books, accounts, papers, and records accurately and truthfully in accordance with the system of accounts prescribed by the Federal Energy Regulatory Commission. All accounting information provided by jurisdictional utilities regarding Nebraska jurisdictional operations shall be presented in accordance with the system of accounts prescribed by the Federal Energy Regulatory Commission. The agents, accountants, or examiners hired or contracted by the Public Service Commission shall have authority under the direction of the commission to inspect and examine any and all relevant books, accounts, papers, records, property, and memoranda kept by such utilities.

Source: Laws 2003, LB 790, § 18.

66-1819 Nonregulated private enterprise; how treated.

(1) For purposes of this section, nonregulated private enterprise means: (a) The business of selling or otherwise providing any gas or electric household appliance; (b) the business of installing any gas or electric household appliance; or (c) the business of servicing any gas or electric household appliance under a contract providing for maintenance or repair of such appliance for a period of time specified by the contract.

(2) Each jurisdictional utility shall maintain, in accordance with generally accepted accounting principles, separate accounts for all nonregulated private enterprise engaged in by such utility. The accounting shall include both costs and revenue associated with such enterprise. Costs to be allocated to such separate accounts shall include materials, labor, insurance, transportation, and all other direct and indirect costs of engaging in the nonregulated private enterprise. Costs or revenue required to be allocated to such separate accounts shall not be included in any rate, toll, or charge for any utility service of the utility.

(3) Except as provided in subsection (4) of this section, the commission may at any time examine and audit the books, accounts, papers, records, and memoranda kept by a natural gas public utility in order to determine compliance with this section.

(4) No audit shall be conducted pursuant to this section more often than once every two years, but nothing in this subsection shall be construed to limit the authority of the commission pursuant to other provisions of the State Natural Gas Regulation Act to examine and audit, for any purpose, the books, accounts, papers, records, and memoranda kept by a natural gas public utility.

Source: Laws 2003, LB 790, § 19.

66-1820 Franchise ordinances; requirements.

No franchise ordinance involving a jurisdictional utility adopted on or after May 31, 2003, shall include provisions contrary to or inconsistent with the State Natural Gas Regulation Act. A city shall file with the commission copies of any such franchise ordinance adopted on or after May 31, 2003, within thirty days of its passage.

Source: Laws 2003, LB 790, § 20.

66-1821 Franchise or certificate of convenience; restrictions.

No franchise or certificate of convenience granted to a jurisdictional utility shall be assigned, transferred, or leased unless the assignment, transfer, or lease has been approved by the commission as being consistent with the public interest.

Source: Laws 2003, LB 790, § 21.

66-1822 Prohibited acts; penalty.

Any person who knowingly makes any false entry in the accounts, books of account, records, or memoranda kept by any jurisdictional utility, who knowingly destroys, mutilates, alters, or by any other means or device falsifies the record of any such account, book of accounts, record, or memorandum, who knowingly neglects or fails to make full, true, and correct entries in such account, book of accounts, record, or memorandum of all facts and transac-

tions pertaining to such utility, or who knowingly makes any false statement required to be made to the commission, shall be guilty of a Class IV felony.

Source: Laws 2003, LB 790, § 22.

66-1823 Criminal and civil proceedings to compel compliance.

The commission may compel compliance with the State Natural Gas Regulation Act and compel compliance with the orders of the commission by proceeding in mandamus, injunction, or other appropriate civil remedies or by appropriate criminal proceedings in any court of competent jurisdiction.

Source: Laws 2003, LB 790, § 23.

66-1824 Federal actions; commission; powers.

(1) The commission shall have power to intervene in any case pending before the relevant federal agency in which interstate rates, service, or safety issues affecting the interest of Nebraska residents, ratepayers, or natural gas public utilities are involved, and the commission is hereby empowered and authorized to pay all expenses of investigation and prosecution of litigation instituted under this section.

(2) If any interstate rate, toll, charge, term or condition of service, classification, or schedule of rates or tolls is found to be unjust, unreasonable, excessive, unjustly discriminatory, unduly preferential, in violation of interstate commerce law, or in conflict with the rules, regulations, or orders of a federal agency, the commission may apply by petition or other proper method to the relevant federal agency for relief.

Source: Laws 2003, LB 790, § 24.

66-1825 Rates; requirements.

(1) Every rate made, demanded, or received by any natural gas public utility shall be just and reasonable. Rates shall not be unreasonably preferential or discriminatory and shall be reasonably consistent in application to a class of ratepayers. Rates negotiated with agricultural ratepayers and high-volume ratepayers in conformity with the State Natural Gas Regulation Act shall not be considered discriminatory.

(2) No jurisdictional utility shall, as to rates or terms and conditions of service, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage.

(3) The commission, in the exercise of its power and duty to determine just and reasonable rates for natural gas public utilities, shall give due consideration to the public need for adequate, efficient, and reasonable natural gas service and to the need of the jurisdictional utility for revenue sufficient to enable it to meet the cost of furnishing the service, including adequate provisions for depreciation of its utility property used and useful in rendering service to the public, and to earn a fair and reasonable return upon the investment in such property.

(4) Cost of service shall include operating expenses and a fair and reasonable return on rate base, less appropriate credits.

(5) In determining a fair and reasonable return on the rate base of a jurisdictional utility, a rate-of-return percentage shall be employed that is

representative of the utility's weighted average cost of capital including, but not limited to, long-term debt, preferred stock, and common equity capital.

(6) The rate base of the jurisdictional utility shall consist of the utility's property, used and useful in providing utility service, including the applicable investment in utility plant, less accumulated depreciation and amortization, allowance for working capital, such other items as may be reasonably included, and reasonable allocations of common property, less such investment as may be reasonably attributed to other than investor-supplied capital unless such deduction is otherwise prohibited by law.

(7) Operating expenses shall consist of expenses prudently incurred to provide natural gas service including (a) a reasonable allocation of common expenses as authorized and limited by section 66-1819 and (b) the quantity and type of purchased services regulated by the Federal Energy Regulatory Commission.

(8) In determining the cost of service, the Public Service Commission shall give effect to all costs and allocations as reflected in the rate schedules approved by the Federal Energy Regulatory Commission.

(9) The Public Service Commission may include in a jurisdictional utility's rate base the full or partial value of stranded investment which was prudently incurred when the investment actually was, or reasonably was expected to be, used and useful in providing service to ratepayers and was stranded due to changes in regulation or other circumstances reasonably beyond the utility's control and subject to any reasonable obligation of the utility to mitigate the cost.

(10) Subsidization is prohibited. For purposes of this subsection, subsidization means the establishment of rates to be collected from a ratepayer or class of ratepayers of a jurisdictional utility that (a) include costs that properly are includable in rates charged to other ratepayers or classes of ratepayers of the utility, or other persons, firms, companies, or corporations doing business with the jurisdictional utility, (b) exclude costs that properly are includable in rates charged to such ratepayers or classes of ratepayers, or (c) include costs that properly are chargeable or allocable to a nonregulated private enterprise engaged in by such jurisdictional utility.

Source: Laws 2003, LB 790, § 25.

66-1826 Payment of dividends; limitation.

If the commission determines on complaint or upon its own initiative, and after hearing on due notice in accordance with rules and regulations adopted and promulgated pursuant to section 75-110, that the payment of any dividend by a jurisdictional utility will impair the financial condition of such company so that such utility cannot maintain its property in a safe operating condition and render adequate service to its ratepayers, the commission shall enter an order prohibiting the payment of such dividends until such time as such company has shown to the commission that the conditions upon which such order was based have ceased to exist.

Source: Laws 2003, LB 790, § 26.

66-1827 Encumbrance of property; limitation.

(1) A jurisdictional utility shall not subject property used in its intrastate natural gas utility business in this state to an encumbrance for the purpose of securing the payment of any new indebtedness or replacement indebtedness in an amount exceeding one hundred million dollars attributable to this state unless first approved by the commission. Approval or disapproval by the commission shall be by formal written order, which shall be issued within forty-five days of the filing of the application.

(2) Upon the application of a jurisdictional utility for approval of and prior to the encumbrances, the commission may make such inquiry or investigation, hold such hearings, and examine such witnesses, books, papers, documents, or contracts as in its discretion it may deem necessary. If the commission finds that the proposed financing is reasonable and proper and in the public interest and will not be detrimental to the interests of the ratepayers affected thereby, the commission shall by written order grant its permission for the proposed financing.

Source: Laws 2003, LB 790, § 27.

66-1828 Reorganization or change of control; approval required.

(1) No reorganization or change of control of a jurisdictional utility shall take place without prior approval by the commission. The commission shall not approve any proposed reorganization or change of control if the commission finds, after public notice and public hearing, that the reorganization or change of control will adversely affect the utility's ability to serve its ratepayers.

(2) For purposes of this section, reorganization or change of control means any transaction which, regardless of the means by which it is accomplished, results in a change in the ownership of a majority of the voting capital stock of a jurisdictional utility and does not include a mortgage or pledge transaction entered into to secure a bona fide borrowing by the party granting the mortgage or making the pledge.

Source: Laws 2003, LB 790, § 28.

66-1829 Disclosure of information; limitations.

(1) The commission shall not disclose to or allow inspection by anyone, including, but not limited to, parties to a regulatory proceeding before the commission, any information of a jurisdictional utility that qualifies as a record which may be withheld from the public upon request of the party submitting such record if the information qualifies under subdivision (3) of section 84-712.05, unless the commission finds that disclosure is warranted after consideration of the following factors:

- (a) Whether disclosure will significantly aid the commission in fulfilling its functions;
- (b) The harm or benefit which disclosure will cause to the public interest;
- (c) The harm which disclosure will cause to the utility; and
- (d) Alternatives to disclosure that will serve the public interest and protect the utility.

(2) If the commission finds that disclosure is warranted pursuant to subsection (1) of this section, the commission shall give the utility notice before disclosing such information.

Source: Laws 2003, LB 790, § 29.

66-1830 Office of public advocate; created; duties; appointment; qualifications.

(1) The office of public advocate is created as a separate and independent division within the commission. The public advocate shall represent the interests of Nebraska citizens and all classes of jurisdictional utility ratepayers, other than high-volume ratepayers, in matters involving jurisdictional utilities and shall act as trial staff before the commission. In the exercise of his or her powers, the public advocate shall consider all relevant factors, including, but not limited to, the provision of safe, efficient, and reliable utility services at just and reasonable rates.

(2) Notwithstanding the provisions of section 75-105, the executive director of the commission, upon consultation with the members of the commission, shall appoint the public advocate. The public advocate shall serve a four-year term and shall be removed only for good cause. The executive director shall be responsible for reviewing the performance of the public advocate, for removing the public advocate in accordance with law, and for filling any vacancy in that position in the same manner as the original appointment.

(3) The public advocate shall be an attorney and shall have experience in consumer-related utility issues or in the operation, management, or regulation of utilities. No person owning stocks or bonds in a corporation subject in whole or in part to regulation by the commission or who has any pecuniary interest in such corporation shall be appointed as public advocate.

Source: Laws 2003, LB 790, § 30.

66-1831 Public advocate; powers.

(1) The public advocate shall have the power to:

(a) Investigate the legality and reasonableness of rates, charges, and practices of jurisdictional utilities except for tariffs subject to section 66-1868;

(b) Petition for relief, request, initiate, and intervene in any proceeding before the commission concerning such utilities except for tariffs subject to section 66-1868;

(c) Represent and appear for ratepayers and the public in proceedings before the commission and in any negotiations or other measures to resolve disputes that give rise to such proceedings except for tariffs subject to section 66-1868;

(d) Represent and appear for ratepayers and the public in any negotiations or other measures to resolve disputes that give rise to proceedings before the commission and make and seek approval of agreements to settle such disputes except for tariffs subject to section 66-1868; and

(e) Make motions for rehearing or reconsideration, appeal, or seek judicial review of any order or decision of the commission regarding jurisdictional utilities except for tariffs subject to section 66-1868.

(2) The public advocate shall not advocate for or on behalf of any single individual, organization, or entity.

(3) The public advocate may enter into stipulations with other parties in any proceeding to balance the interests of those it represents with the interests of the jurisdictional utilities as a means of improving the quality of resulting decisions in a highly technical environment and minimizing the cost of regulation.

Source: Laws 2003, LB 790, § 31; Laws 2012, LB1115, § 12.

66-1832 Office of public advocate; administration.

The office of the public advocate shall be located at the same location as the commission but shall be kept separate from the commission's other offices as provided by rules and regulations adopted and promulgated by the commission. The public advocate may hire or contract with attorneys, legal assistants, experts, consultants, secretaries, clerks, and such other staff necessary for the full and efficient discharge of the duties of the office as permitted by the budget of the public advocate as approved by the commission. The public advocate shall employ and supervise personnel as authorized by the budget approved by the commission. The employees of the public advocate shall not be supervised or directed by the commission. Funding for the office of public advocate shall be approved by the commission and collected through the assessment process as provided for in sections 66-1840 and 66-1841. The commission shall decide all matters of shared administrative and clerical personnel.

Source: Laws 2003, LB 790, § 32.

66-1833 Public advocate; access to information; limitations.

The public advocate and his or her employees or agents shall have free access to all files, records, and documents of the commission except:

- (1) Personal information in confidential personnel records;
- (2) Records which represent the work product of legal counsel of the commission, and records of confidential or privileged communications between the members of the commission and its legal counsel, when the records relate to a proceeding before the commission in which the public advocate is, or is appearing for, a party; and
- (3) Records that are designated as confidential pursuant to commission rules and regulations, except as permitted by a nondisclosure agreement between a specified representative of the public advocate and the commission and the person who claims the records at issue are confidential.

Source: Laws 2003, LB 790, § 33.

66-1834 Public advocate; records; how kept.

The files, records, and documents of the public advocate shall be separately kept, maintained, and controlled by the public advocate.

Source: Laws 2003, LB 790, § 34.

66-1835 Public advocate; ex parte communications.

In any proceeding before the commission in which the public advocate is a party or is appearing for a party, the public advocate shall be considered a

party for purposes of the restrictions on ex parte communications set forth in sections 75-130.01 and 84-914.

Source: Laws 2003, LB 790, § 35.

66-1836 Investigations; powers.

The commission is hereby authorized to designate or appoint, from among its employees, examiners and referees to make investigations that are required of the commission by law. Such investigations shall be made and conducted as and in the manner and at the place directed by the commission. The examiners and referees shall report their findings and recommendations to the commission.

Source: Laws 2003, LB 790, § 36.

66-1837 Commission; contract for services.

(1) The commission is hereby authorized to contract for professional services and expert assistance, including, but not limited to, the services of engineers, accountants, attorneys, and economists, to assist in investigations and appraisals.

(2) Such contracts shall be negotiated by the chairperson of the commission, the executive director, or the designee of the executive director. The commission shall consider all proposals by persons applying to perform such contracts and shall award the contracts.

Source: Laws 2003, LB 790, § 37.

66-1838 General rate filings; requirements.

(1) The provisions of this section apply only to general rate filings.

(2) Except as provided in subsection (3) of this section, a jurisdictional utility shall provide written notice to each city that will be affected by a proposed change in rates simultaneously with the filing with the commission of a request for a change in rates pursuant to the State Natural Gas Regulation Act. Such notice shall identify the cities that will be affected by the rate filing. The jurisdictional utility shall also file the information prescribed by the act and rules and regulations for rate changes adopted and promulgated by the commission with each city affected by such proposed rate change in electronic or digital format or, upon request, as paper documents.

(3) A jurisdictional utility may determine not to participate in negotiations with affected cities. Such decision, if indicated by written notice in the initial rate filing to the commission, shall relieve it from the duty of supplying notice to such cities as specified in subsection (2) of this section. The jurisdictional utility shall, not later than fifteen days after the initial filing, inform the commission by written notice of any decision not to participate in negotiations.

(4) Affected cities shall have a period of sixty days after the date of such filing within which to adopt a resolution evidencing their intent to negotiate an agreed rate change with the jurisdictional utility. A copy of the resolution adopted by each city under this section, notice of the rejection by a city of such a resolution, or written notice by an authorized officer of the city of the city's rejection of negotiations shall be provided to the commission and to the jurisdictional utility within seven days after its adoption.

(5) Any city may, at any time, by resolution adopted by its governing body and filed with the commission, indicate its rejection of participation in any future negotiations pertaining to any rate change whenever the same may be filed. Such resolution shall be treated as a duly filed notice of rejection of participation in negotiations for any rate filing by a jurisdictional utility at any time thereafter. The city filing a resolution pursuant to this subsection shall be bound thereby until such time as a resolution by the governing body of that city revoking its prior rejection of participation is filed with the commission.

(6) If the commission receives resolutions adopted prior to the expiration of the sixty-day period provided for in subsection (4) of this section evidencing the intent to negotiate from cities representing more than fifty percent of the ratepayers within the affected cities, the commission shall certify the case for negotiation between such cities and the jurisdictional utility and shall take no action upon the rate filing until the negotiation period and any stipulated extension has expired or an agreement on rates is submitted, whichever occurs first. The commission's certification shall be issued within eight business days after the earlier of (a) receipt of a copy of the resolutions from cities representing fifty percent or more of ratepayers within the affected cities or (b) the end of the sixty-day period provided for in subsection (4) of this section.

(7) When (a) the commission receives notice or has written documentary evidence on file from cities representing more than fifty percent of the ratepayers within the affected cities which notice or documents either expressly reject negotiations or reject such a resolution or (b) the commission receives written notice from the jurisdictional utility expressly rejecting negotiations, the rate change review by the commission shall proceed immediately from the date when the commission makes such a determination or receives such notice.

(8) When the sixty-day period provided for in subsection (4) of this section has expired without the receipt by the commission of resolutions from cities representing more than fifty percent of the ratepayers within the affected cities evidencing their intent to negotiate an agreed rate change review by the commission with the jurisdictional utility, the rate change shall proceed immediately from the date when the commission makes such a determination.

(9) If commission certification to pursue negotiations is received, cities adopting resolutions to negotiate and the jurisdictional utility shall enter into good faith negotiations over such proposed rate change.

(10)(a) The jurisdictional utility's filed rates may be placed into effect as interim rates, subject to refund, upon the adoption of final rates sixty days after the filing with the commission, if the commission certifies the rate filing for negotiations.

(b) If the rate filing is not certified by the commission for negotiations, the jurisdictional utility's filed rates may be placed into effect as interim rates, subject to refund, upon the adoption of final rates, ninety days after filing with the commission.

(11) Negotiations between the cities and the jurisdictional utility shall continue for a period not to exceed ninety days after the date of the rate filing, except that the parties may mutually agree to extend such period to a future date certain and shall provide such stipulation to the commission.

(12) Notwithstanding any other provision of law, any information exchanged between the jurisdictional utility and cities is not a public record within the meaning of sections 84-712 to 84-712.09 and its disclosure to the commission,

its staff, the public advocate, or any other person or corporation, for any purpose, is expressly prohibited.

(13) If the cities and the jurisdictional utility reach agreement upon new rates, such agreement shall be reduced to writing, including proposed findings of fact, proposed conclusions of law, and a proposed commission order, and filed with the commission. If cities representing more than fifty percent of the ratepayers within the cities affected by the proposed rate change enter into an agreement upon new rates and such agreement is filed with and approved by the commission, such rates shall be effective and binding upon all of the jurisdictional utility's ratepayers affected by the rate filing.

(14) Any agreement filed with the commission shall be presumed in the public interest, and absent any clear evidence on the face of the agreement that it is contrary to the standards and provisions of the State Natural Gas Regulation Act, the agreement shall be approved by the commission within a reasonable time.

(15)(a) Except as provided in subdivision (c) of this subsection, if the negotiations fail to result in an agreement upon new rates, the rates requested in the rate filing shall become final and no longer subject to refund if the commission has not taken final action within two hundred ten days after the date of the expiration of the negotiation period or after the date upon which the jurisdictional utility and the cities file a written agreement that the negotiations have failed and that the rate change review by the commission should proceed as provided in subsection (7) of this section.

(b) Except as provided in subdivision (c) of this subsection, if the filing is not certified for negotiations, the rate requested in the rate filing shall become final and no longer subject to refund if the commission has not taken final action within one hundred eighty days after the date of the expiration of the sixty-day period provided for in subsection (4) of this section or the date that the commission receives notice or has accumulated written documentary evidence on file from cities representing more than fifty percent of the ratepayers within the affected cities, whichever is earlier, if such notice or documents either expressly reject negotiations or reject such a resolution.

(c) The commission may extend the deadlines specified in subdivision (a) or (b) of this subsection by a period not to exceed an additional sixty days upon a finding that additional time is necessary to properly fulfill its responsibilities in the proceeding.

(16) Within thirty days after such changes have been authorized by the commission or become effective, copies of all tariffs, schedules, and classifications, and all terms or conditions of service, except those determined to be confidential under rules and regulations adopted and promulgated by the commission, shall be available for public inspection in every office and facility open to the general public of the jurisdictional utility in this state.

Source: Laws 2003, LB 790, § 38; Laws 2008, LB1072, § 1.

66-1839 Municipal Rate Negotiations Revolving Loan Fund; created; use; administration; audit; investment; loan repayment.

(1) The Municipal Rate Negotiations Revolving Loan Fund is created. The fund shall be used to make loans to cities for rate negotiations under section 66-1838 or negotiations or litigation under section 66-1867, except that trans-

fers may be made from the fund to the General Fund at the direction of the Legislature. Only one loan may be made for each rate filing made by a jurisdictional utility within the scope of each section. Money in the Municipal Natural Gas Regulation Revolving Loan Fund that is not necessary to finance rate proceedings initiated prior to May 31, 2003, shall be transferred to the Municipal Rate Negotiations Revolving Loan Fund on May 31, 2003, and repayments of loans or other obligations owing to the Municipal Natural Gas Regulation Revolving Loan Fund on May 31, 2003, shall be deposited in the Municipal Rate Negotiations Revolving Loan Fund upon receipt. Any obligations against or commitments of money from the Municipal Natural Gas Regulation Revolving Loan Fund on May 31, 2003, shall be obligations or commitments of the Municipal Rate Negotiations Revolving Loan Fund.

(2) The Municipal Rate Negotiations Revolving Loan Fund shall be administered by the commission which shall adopt and promulgate rules and regulations to carry out this section. The rules and regulations shall include:

- (a) Loan application procedures and forms; and
- (b) Fund-use monitoring and quarterly accounting of fund use.

(3) Applicants for a loan from the fund shall provide a budget statement which specifies the proposed use of the loan proceeds. Such proceeds may only be used for the costs and expenses incurred by the city to analyze rate filings for the purposes specified in section 66-1838 or 66-1867. Such costs and expenses may include the cost of rate consultants and attorneys and any other necessary costs related to the negotiation process or litigation under section 66-1867. Disbursements from the fund shall be audited by the commission. The affected jurisdictional utility may petition the commission to initiate a proceeding to determine whether the disbursements from the fund were expended by the negotiating cities consistent with the requirements of this section.

(4) The fund shall be audited as part of the regular audit of the commission's budget, and copies of the audit shall be available to all cities and any jurisdictional utility. Audits conducted pursuant to this section are public records.

(5) Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. If the fund balance exceeds four hundred thousand dollars, the income on the money in the fund shall be credited to the permanent school fund until the balance of the Municipal Rate Negotiations Revolving Loan Fund falls below such amount.

(6) A city which receives a loan under this section shall be responsible to provide for the opportunity for all other cities engaged in the same negotiations with the same jurisdictional utility to participate in all negotiations. Such city shall not exclude any other city from the information or benefits accruing from the use of loan funds.

(7) Upon the conclusion of negotiations, regardless of the result, the loan shall be repaid by the jurisdictional utility to the commission within thirty days after the date upon which it is billed by the commission. The utility shall recover the amount paid on the loan by a special surcharge on ratepayers who are or will be affected by the rate increase request. These ratepayers may be billed on their monthly statements for a period not to exceed twelve months,

and the surcharge may be shown as a separate item on the statements as a charge for rate negotiation expenses.

Source: Laws 2003, LB 790, § 39; Laws 2009, LB658, § 3; Laws 2009, First Spec. Sess., LB3, § 42.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

66-1840 Commission; investigation expenses; assessment against jurisdictional utility; procedure.

(1) Whenever, in order to carry out the duties imposed upon it by law, the commission, in a proceeding upon its own motion, on complaint, or upon an application to it, including rate filings, deems it necessary to investigate any jurisdictional utility or make appraisals of the property of any jurisdictional utility, such utility, in case the expenses reasonably attributable to such investigation or appraisal exceed the sum of one hundred dollars, including both direct and indirect expenses incurred by the commission or its staff, shall pay such expenses which shall be assessed against such utility by the commission. Such expenses shall be assessed beginning on the date that the proceeding is filed or beginning three business days after the commission gives the utility notice of the assessment by United States mail, whichever is later. The commission shall give such utility notice and opportunity for a hearing in accordance with rules and regulations adopted and promulgated pursuant to section 75-110. At such hearing, the utility may be heard as to the necessity of such investigation or appraisal and may show cause, if any, why such investigation or appraisal should not be made or why the costs thereof should not be assessed against such utility. The finding of the commission as to the necessity of the investigation or appraisal and the assessment of the expenses thereof shall be conclusive, except that no such utility shall be liable for payment of any such expenses incurred by the commission in connection with any proceeding before or within the jurisdiction of any federal regulatory body.

(2) The commission shall ascertain the expenses of any such investigation or appraisal and by order assess such expenses against the jurisdictional utility investigated or whose property is appraised in such proceeding and shall render a bill therefor, by United States mail, to the jurisdictional utility, either at the conclusion of the investigation or appraisal or from time to time during such investigation or appraisal. Such bill shall constitute notice of such assessment and demand of payment thereof. Upon a bill rendered to such utility, within fifteen days after the mailing thereof, such utility shall pay to the commission the amount of the assessment for which it is billed. Such payment when made shall be remitted by the commission to the State Treasurer for credit to the Public Service Commission Regulation Fund for the use of the commission. The total amount, in any one fiscal year, for which any utility shall be assessed under this section shall not exceed the following: (a) For a jurisdictional utility that has not filed an annual report with the commission as provided in the State Natural Gas Regulation Act prior to the beginning of the commission's fiscal year, actual expenses, including direct and indirect expenses, incurred by the commission; and (b) for any other jurisdictional utility, one percent of the utility's gross operating jurisdictional revenue less gas cost derived from intrastate natural gas utility business as reflected in the last annual report filed with the commission pursuant to the act prior to the

beginning of the commission's fiscal year. The commission may render bills in one fiscal year for costs incurred within a previous fiscal year.

(3) The commission, in accordance with the procedures prescribed by subsection (2) of this section, may assess against an entity, other than an individual residential ratepayer or individual agricultural ratepayer, that is not subject to assessment pursuant to subsection (1) of this section actual expenses of any services extended, filings processed, or actions certified by the commission for the entity.

Source: Laws 2003, LB 790, § 40; Laws 2006, LB 14, § 1.

66-1841 Commission; determination of total expenditures; assessment against jurisdictional utilities; limitation.

(1) The commission shall determine, within thirty days after each quarter-year for each such quarter-year, the total amount of its expenditures during such period of time. The total amount shall include the salaries of members and employees and all other lawful expenditures of the commission, including all expenditures in connection with investigations or appraisals made under the State Natural Gas Regulation Act, except that there shall not be included in such total amount of expenditures for the purpose of this section the expenditures during such period of time which are otherwise provided for by fees and assessments pursuant to the act.

(2) From the amount determined under subsection (1) of this section, the commission shall deduct (a) all amounts collected under section 66-1840 during such period of time and (b) all other funds collected with regard to jurisdictional utilities.

(3) To the remainder, after making the deductions under subsection (2) of this section, the commission shall add such amount as in its judgment may be required to satisfy any deficiency in the prior assessment period's assessment and to provide for anticipated increases in necessary expenditures for the current assessment period.

(4) The amount determined under subsections (1) through (3) of this section shall be assessed by the commission against all jurisdictional utilities and shall not exceed, during any fiscal year, the greater of one hundred dollars or each utility's proportionate share of the total amount determined under this section based upon meters served by each utility as a proportion of all meters of jurisdictional utilities. Such assessment shall be paid to the commission within fifteen days after the notice of assessment has been mailed to such utilities, which notice of assessment shall constitute demand of payment thereof.

(5) The commission shall remit all money received by or for it for the assessment imposed under this section to the State Treasurer for credit to the Public Service Commission Regulation Fund.

(6)(a) Until June 1, 2007, a jurisdictional utility may recover the amount of any assessments or charges paid to the commission pursuant to this section and section 66-1840 through a special surcharge on ratepayers which may be billed on the monthly statements for up to a twelve-month period immediately following their payment by the jurisdictional utility. The surcharge shall be shown on the statements as a charge for state regulatory assessments. The commission shall permit the utility to include in such surcharge interest upon the amount of the charges and assessments paid to the commission prior to

their recovery from ratepayers. Such interest shall be at a rate not to exceed the rate established by section 45-103.

(b) On and after June 1, 2007, the commission by general rule and regulation shall authorize the recovery of the amount of any assessments or charges paid to the commission pursuant to this section and section 66-1840 in a general rate filing or through a special surcharge which may be billed on the monthly statements for up to a twelve-month period immediately following their payment by the jurisdictional utility.

Source: Laws 2003, LB 790, § 41; Laws 2006, LB 14, § 2.

66-1842 Public Service Commission Regulation Fund; created; use; investment.

The Public Service Commission Regulation Fund is created. Transfers may be made from the Public Service Commission Regulation Fund to the General Fund at the direction of the Legislature. The commission shall remit all money received by or for it in payment of the fees or assessments imposed by the State Natural Gas Regulation Act to the State Treasurer for credit to the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2003, LB 790, § 42.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

66-1843 Jurisdictional utility; failure to pay assessment; procedure.

If any jurisdictional utility against which an assessment has been made pursuant to the State Natural Gas Regulation Act, within fifteen days after the notice of such assessment, (1) neglects or refuses to pay the same or (2) fails to file objections to the assessment with the commission as provided in section 66-1844, the commission shall transmit to the State Treasurer a certified copy of the notice of assessment, together with notice of neglect or refusal to pay the assessment, and on the same day the commission shall mail by registered mail to the utility against which the assessment has been made a copy of the notice which it has transmitted to the State Treasurer. If any such utility fails to pay such assessment to the State Treasurer within ten days after receipt of such notice and certified copy of such assessment, the assessment shall bear interest at the rate of fifteen percent per annum from and after the date on which the copy of the notice was mailed by registered mail to such utility.

Source: Laws 2003, LB 790, § 43.

66-1844 Jurisdictional utility; objections to assessment; procedure.

(1) Within fifteen days after the date of the mailing of any notice of assessment under sections 66-1840 and 66-1841, the jurisdictional utility against which such assessment has been made may file with the commission objections setting out in detail the ground upon which such objector regards such assessment to be excessive, erroneous, unlawful, or invalid. The commission, after notice to the objector, shall hold a hearing in accordance with rules and regulations adopted and promulgated pursuant to section 75-110. The commis-

sion shall determine if the assessment or any part of the assessment is excessive, erroneous, unlawful, or invalid and shall render an order upholding, invalidating, or amending the assessment. An amended assessment shall have in all respects the same force and effect as though it were an original assessment.

(2) If any assessment against which objections have been filed is not paid within ten days after service of an order finding that such objections have been overruled and disallowed by the commission, the commission shall give notice of such delinquency to the State Treasurer and to the objector in the manner provided for in the State Natural Gas Regulation Act. The State Treasurer shall then collect the amount of such assessment. If an amended assessment is not paid within ten days after service of the order of the commission, the commission shall notify the State Treasurer and the objector as in the case of delinquency in the payment of an original assessment. The State Treasurer shall then collect the amount of such assessment as provided in the case of an original assessment.

Source: Laws 2003, LB 790, § 44.

66-1845 Jurisdictional utility; assessment; action to recover.

Every jurisdictional utility against which an assessment is made shall pay the amount thereof and, after such payment, may under the conditions in the State Natural Gas Regulation Act, at any time within one year from the date the payment was made, sue the state in an action at law to recover the amount paid with legal interest thereon from the date of payment, upon the ground that the assessment was excessive, erroneous, unlawful, or invalid in whole or in part. If it is finally determined in such action that any part of the assessment, for which payment was made, was excessive, erroneous, unlawful, or invalid, the State Treasurer shall make a refund to the claimant as directed by the court.

Source: Laws 2003, LB 790, § 45.

66-1846 Action to recover assessment; requirements.

(1) No action for recovery of any amount paid pursuant to the State Natural Gas Regulation Act shall be maintained in any court unless objections have been filed with the commission as provided in section 66-1844. In any action for recovery of any payments made under the act, the claimant shall be entitled to raise every relevant issue of law, but the commission's findings of fact made pursuant to the act shall be prima facie evidence of the facts therein stated.

(2) The following shall be deemed to be findings of fact of the commission within the meaning of the act: (a) Determinations of fact expressed in notices of assessments given pursuant to the act; and (b) determinations of fact set out in those minutes of the commission which record the action of the commission in connection with making the assessments and passing upon objections thereto.

Source: Laws 2003, LB 790, § 46.

66-1847 Public natural gas utilities; requirements.

Natural gas utilities owned and operated by a city or a metropolitan utilities district shall establish rates and conditions of service for all residential ratepayers of each such utility in a nondiscriminatory manner.

Source: Laws 2003, LB 790, § 47.

66-1848 Competitive natural gas providers and aggregators; terms, defined.

For purposes of this section and section 66-1849:

(1) Aggregator means a person who combines retail end users into a group and arranges for the acquisition of competitive natural gas services without taking title to those services; and

(2)(a) Competitive natural gas provider means a person who takes title to natural gas and sells it for consumption by a retail end user. Competitive natural gas provider includes an affiliate of a natural gas public utility.

(b) Competitive natural gas provider does not include the following:

(i) A jurisdictional utility;

(ii) A city-owned or operated natural gas utility or metropolitan utilities district in areas in which it provides natural gas service through pipes it owns; or

(iii) A natural gas public utility that is not subject to the act as provided in section 66-1803 in areas in which it is providing natural gas service in accordance with section 66-1803.

Source: Laws 2003, LB 790, § 48.

A metropolitan utilities district that intends to sell natural gas to distribution facilities it does not own falls under the certification provisions of this section and the Public Service Commission's jurisdiction. In re Application of Metropolitan Util. Dist., 270 Neb. 494, 704 N.W.2d 237 (2005).

66-1849 Competitive natural gas providers and aggregators; certification by commission; costs and expenses; allocation.

(1) The commission shall certify all competitive natural gas providers and aggregators providing natural gas services. In an application for certification, a competitive natural gas provider or aggregator shall reasonably demonstrate managerial, technical, and financial capability sufficient to obtain and deliver the services such provider or aggregator proposes to offer. The commission may establish reasonable conditions or restrictions on the certificate at the time of issuance. The commission shall adopt and promulgate rules and regulations to establish specific criteria for certification. The commission shall make a determination on an application for certification within ninety days after its submission unless the commission determines that additional time is necessary to consider the application. If the commission determines that additional time is necessary to consider the application, the commission may extend the time for making a determination for an additional sixty days.

(2) The commission may resolve disputes involving the provision of natural gas services by a competitive natural gas provider or aggregator.

(3) The commission shall allocate the costs and expenses reasonably attributable to certification and dispute resolution as authorized in this section to persons identified as parties to such proceeding who are engaged in or who seek to engage in providing natural gas services or other persons identified as participants in such proceeding. The funds received for the costs and expenses of certification and dispute resolution shall be remitted to the State Treasurer for credit to the Public Service Commission Regulation Fund.

Source: Laws 2003, LB 790, § 49.

66-1850 Act; enforcement; prior law; applicability.

(1) The State Natural Gas Regulation Act shall not be enforced retroactively before May 31, 2003. A rate filing made pursuant to the provisions of the Municipal Natural Gas Regulation Act prior to such date shall be governed by the act by its terms as in effect on the date of the filing. The enactment into law of the State Natural Gas Regulation Act shall not have the effect of releasing or waiving any right of action by the state, any body corporate and politic, municipal corporation, person, or corporation, pending on May 31, 2003, for any right which may have arisen or accrued under the Municipal Natural Gas Regulation Act.

(2) The rates, terms and conditions of service, and rate areas of a jurisdictional utility in effect on or before May 31, 2003, shall remain in effect after May 31, 2003, and shall be treated as if approved and adopted by the commission pursuant to the State Natural Gas Regulation Act.

(3) The rate areas established pursuant to the Municipal Natural Gas Regulation Act and in effect on May 31, 2003, shall be the initial rate areas in effect under the State Natural Gas Regulation Act. Each jurisdictional utility shall file with the commission a map showing the boundaries of such areas and intervening and adjacent rural territories served within such rate areas.

(4) Except as provided in subsection (5) of this section, following the filing of maps pursuant to subsection (3) of this section, a jurisdictional utility may file with the commission a revised map or maps of any affected rate areas reflecting changes in the boundaries of one or more of the initially filed rate areas and such changes shall become effective upon filing. The commission may, upon its own initiative or upon complaint, review such rate area boundaries and, following notice and hearing, reject or modify proposed changes upon the basis that the proposed changes in boundaries are unduly preferential, unjustly discriminatory, or not just and reasonable.

(5) A rate area containing a city of the primary class shall not be changed to include any other city until after June 1, 2007.

(6) The commission may waive application of the definition of high-volume ratepayer for all ratepayers (a) who prior to April 16, 2004, obtained natural gas service from a jurisdictional utility pursuant to subsection (3) of former section 19-4604, as such section existed prior to May 24, 2003, and (b) whose current consumption of natural gas would qualify such ratepayers to receive natural gas service pursuant to such former section if the section had not been repealed. All ratepayers meeting such criteria may be treated as high-volume ratepayers pursuant to the State Natural Gas Regulation Act. The authority granted pursuant to this subsection and any such waiver shall expire on June 1, 2007.

Source: Laws 2003, LB 790, § 50; Laws 2004, LB 499, § 1.

66-1851 Jurisdictional utility; customer choice or other programs; how treated.

(1) Notwithstanding any other provisions in the State Natural Gas Regulation Act, a jurisdictional utility may file with the commission rates and one or more rate schedules and other charges, and rules and regulations pertaining thereto, that enable the utility to provide service to ratepayers under customer choice and other programs offered by a utility to unbundle one or more elements of the service provided by the utility.

(2) The commission shall not eliminate or modify the terms of any customer choice or other unbundling programs in existence on May 31, 2003, or as thereafter modified by a filing made by the jurisdictional utility, except as permitted by the act after complaint or the commission's own motion and hearing. In any rate determination made under the act, the commission shall not penalize the utility for any action prudently taken or decision prudently made under its approved bundling program, by imputing revenue at maximum rates or otherwise.

(3) The commission may not modify the provisions of a program under this section except upon complaint or the commission's own motion, wherein the commission finds, after hearing, that one or more aspects of the program are unduly preferential, unjustly discriminatory, or not just and reasonable.

Source: Laws 2003, LB 790, § 51.

66-1852 Extension of natural gas mains or other services; limitations.

(1) Except as otherwise expressly authorized in the State Natural Gas Regulation Act, no person, public or private, shall extend duplicative or redundant natural gas mains or other natural gas services into any area which has existing natural gas utility infrastructure or where a contract has been entered into for the placement of natural gas utility infrastructure.

(2) The prohibition in subsection (1) of this section shall not apply in any area in which two or more jurisdictional utilities share authority to provide natural gas within the same territory under franchises issued by the same city.

(3) The prohibition in subsection (1) of this section shall not apply to the extension by a jurisdictional utility of a transmission line connecting to distribution facilities owned or operated by a jurisdictional utility, a city, or a metropolitan utilities district or to serve city-owned electric generating facilities located within the boundaries of a city within which the jurisdictional utility extending the transmission line provides natural gas service to customers.

(4)(a) The prohibition in subsection (1) of this section shall not apply to the extension by a metropolitan utilities district of a transmission line connecting to distribution facilities owned or operated by such metropolitan utilities district.

(b) The extension by a metropolitan utilities district of a transmission line connecting to distribution facilities owned or operated by such metropolitan utilities district shall not constitute an enlargement or expansion of its natural gas service area and shall not be considered part of its natural gas service area.

(c) The extension of a transmission line by a jurisdictional utility as provided in subsection (3) of this section shall not constitute an enlargement or expansion of the jurisdictional utility's natural gas service area and shall not be considered part of its natural gas service area if the transmission line makes its connection to distribution facilities in a county in which the natural gas service area or a portion of the natural gas service area of a metropolitan utilities district is located.

(5) The prohibition in subsection (1) of this section shall not apply to the extension by a city that owns or operates a natural gas utility of a transmission line that connects to its own distribution facilities.

(6) For purposes of this section, a transmission line means a pipeline, other than a gathering pipeline, distribution pipeline, or service line, that transports natural gas.

(7) Nothing in this section shall be construed to authorize a jurisdictional utility to extend a transmission line to a high-volume ratepayer with an existing source and adequate supply of natural gas that is located outside the area in which that jurisdictional utility has existing natural gas utility infrastructure.

Source: Laws 2003, LB 790, § 52; Laws 2006, LB 1249, § 4; Laws 2008, LB1072, § 2.

66-1853 Certificate of public convenience; requirements.

(1) Except as provided in subsection (2) of this section, no jurisdictional utility shall transact business in Nebraska until it has obtained a certificate from the commission that public convenience will be promoted by the transaction of the business and permitting the applicants to transact the business of a jurisdictional utility in this state.

(2) A jurisdictional utility transacting business in this state shall be issued a certificate of convenience based upon its natural gas service as of May 31, 2003.

(3) Every jurisdictional utility shall be required to furnish reasonably adequate and sufficient service and facilities for the use of any and all products or services rendered, furnished, supplied, or produced by such utility.

Source: Laws 2003, LB 790, § 53.

66-1854 Cost of gas supply; effect on rate schedules; procedure.

(1) The commission shall allow jurisdictional utilities to implement and thereafter modify gas supply cost adjustment rate schedules that reflect increases or decreases in the cost of the utility's gas supply such as (a) federally regulated wholesale rates for energy delivered through interstate facilities, (b) direct costs for natural gas delivered, or (c) costs for fuel used in the manufacture of gas. Such costs may, in the discretion of the commission, include costs related to gas price volatility risk management activities, the costs of financial instruments purchased to hedge against gas price volatility, if prudent, and other relevant factors. Gas supply cost adjustment rate schedules in effect on May 31, 2003, shall continue in effect until changed pursuant to the provisions of the State Natural Gas Regulation Act. In each such proceeding the burden of proof shall be upon the utility.

(2) Unless the commission otherwise orders and except as otherwise provided in this section, no change shall be made by any jurisdictional utility in any purchased gas adjustment schedule, except after thirty days' notice to the commission and to the public as provided in this section. Such notice shall be given by filing with the commission and keeping open for public inspection new schedules or supplements stating plainly the change or changes to be made in the schedule or schedules then in force, and the time when the change or changes will go into effect, and by publication in a newspaper of general circulation of notice to ratepayers affected by such change. The utility may propose and the commission, for good cause shown, may allow changes without requiring the thirty days' notice, by an order specifying the changes to be made and the time when they shall take effect and the manner in which they shall be filed and published. When any change is proposed in any rate or other charge to ratepayers, such proposed change shall be plainly indicated on the new schedule filed with the commission.

(3) The commission may modify a jurisdictional utility's gas supply cost adjustment rate schedule under procedures specified in the act for setting rates by order of the commission.

(4) Once annually, the commission may initiate public hearings, upon complaint, to determine whether the gas supply cost adjustment schedule of a jurisdictional utility reflects the costs of the utility's gas supply and whether such costs were prudently incurred and to reconcile any amounts collected from ratepayers with the actual costs of gas supplies incurred by the utility.

(5) Any refund, including interest thereon, if any, received by the jurisdictional utility with respect to services purchased under Federal Energy Regulatory Commission natural gas tariff related to increased rates paid by the utility subject to refund, and applicable to natural gas services purchased for service to Nebraska ratepayers, shall be passed along to presently served Nebraska ratepayers by an appropriate adjustment shown as a credit on subsequent bills during a period selected by the utility, not to exceed twelve months, or by a cash refund at the option of the utility. The utility shall not be required to return such refunds to ratepayers served at competitively set or negotiated rates, or under alternative rate mechanisms, when the ratepayer is paying less than the full rate determined pursuant to the gas supply cost adjustment rate schedule, or under a customer choice or unbundling program.

(6) The provisions of this section shall not be construed to modify or otherwise restrict the Public Service Commission's authority to establish alternative rate mechanisms as authorized by the act, when such mechanisms modify a utility's recovery of gas supply costs.

Source: Laws 2003, LB 790, § 54.

66-1855 Banded rates; commission; powers.

The commission may authorize, consistent with general regulatory principles, including, but not limited to (1) banded rates with a minimum and maximum rate that allows the jurisdictional utility to offer ratepayers rates within the rate band for the purpose of attracting additional natural gas service demand or to retain such demand, (2) mechanisms for the determination of rates by negotiation, and (3) customer choice and other programs to be offered by a natural gas public utility to unbundle one or more elements of the service provided by the utility.

Source: Laws 2003, LB 790, § 55.

66-1856 Construction of new facilities; prior approval not required.

A jurisdictional utility shall not be required to obtain prior approval from the commission to begin the construction of any new plant, equipment, property, or facility that the utility determines to be necessary to provide adequate and reliable service to ratepayers.

Source: Laws 2003, LB 790, § 56.

66-1857 Rights and remedies; how construed.

The rights and remedies given by the State Natural Gas Regulation Act shall be construed as cumulative of all other laws in force in this state relating to jurisdictional utilities and shall not repeal any other remedies or rights now existing in this state for the enforcement of the duties and obligations of

jurisdictional utilities or the rights of the commission to regulate and control the same except where inconsistent with the act.

Source: Laws 2003, LB 790, § 57.

66-1858 Metropolitan utilities district; solicitations prohibited; proposals authorized; when.

Whenever any city is furnished natural gas pursuant to a franchise agreement with a jurisdictional utility, a metropolitan utilities district shall not solicit such city to enter into a franchise agreement or promote discontinuance of natural gas service with the utility unless a specific invitation to submit a proposal on such a franchise has been formally presented to the board of directors of the metropolitan utilities district. For purposes of this section, a specific invitation to submit a proposal means a resolution adopted by the governing body of the city.

Whenever a specific invitation to submit a proposal is received by the board of directors of a metropolitan utilities district, the invitation will be considered by the board at its next regularly scheduled monthly meeting.

Source: Laws 1999, LB 78, § 2; R.S.1943, (2004), § 57-1301; Laws 2006, LB 1249, § 5.

66-1859 Enlargement or extension of area; applicability of sections.

Sections 66-1858 to 66-1864 shall be applicable to a jurisdictional utility only when it is operating in a county in which there is located the natural gas service area, or portion of the natural gas service area, of a metropolitan utilities district and only with regard to matters arising within any such county. Within the limits of a municipal county, the provisions of sections 66-1858 to 66-1864 shall be applicable to the extent and in the manner provided by the Legislature as required by section 13-2802.

Source: Laws 1999, LB 78, § 3; Laws 2001, LB 142, § 52; R.S.1943, (2004), § 57-1302; Laws 2006, LB 1249, § 6.

66-1860 Enlargement or extension of area; considerations.

No jurisdictional utility or metropolitan utilities district may extend or enlarge its natural gas service area or extend or enlarge its natural gas mains or natural gas services unless it is in the public interest to do so. In determining whether or not an extension or enlargement is in the public interest, the district or the utility shall consider the following:

- (1) The economic feasibility of the extension or enlargement;
- (2) The impact the enlargement will have on the existing and future natural gas ratepayers of the metropolitan utilities district or the jurisdictional utility;
- (3) Whether the extension or enlargement contributes to the orderly development of natural gas utility infrastructure;
- (4) Whether the extension or enlargement will result in duplicative or redundant natural gas utility infrastructure; and
- (5) Whether the extension or enlargement is applied in a nondiscriminatory manner.

Source: Laws 1999, LB 78, § 4; R.S.1943, (2004), § 57-1303; Laws 2006, LB 1249, § 7.

66-1861 Enlargement or extension of area; rebuttable presumptions.

In determining whether an enlargement or extension of a natural gas service area, natural gas mains, or natural gas services is in the public interest pursuant to section 66-1860, the following shall constitute rebuttable presumptions:

(1) Any enlargement or extension by a metropolitan utilities district within a city of the metropolitan class or its extraterritorial zoning jurisdiction is in the public interest;

(2) Any enlargement or extension by a jurisdictional utility within a city other than a city of the metropolitan class in which it serves natural gas on a franchise basis or its extraterritorial zoning jurisdiction is in the public interest; and

(3) Any enlargement or extension by a metropolitan utilities district within its statutory boundary or within a city other than a city of the metropolitan or primary class in which it serves natural gas on a franchise basis or its extraterritorial zoning jurisdiction is in the public interest.

Any enlargement or extension by a metropolitan utilities district within the boundaries of a city of the metropolitan class involving the exercise of the power of eminent domain pursuant to subsection (2) of section 14-2116 shall, by reason of such exercise, be conclusively determined to be in the public interest.

Source: Laws 1999, LB 78, § 5; R.S.1943, (2004), § 57-1304; Laws 2006, LB 1249, § 8.

66-1862 Duplicative gas mains or services; prohibited.

A metropolitan utilities district or jurisdictional utility shall not extend duplicative or redundant interior natural gas mains or natural gas services into a subdivision, whether residential, commercial, or industrial, which has existing natural gas utility infrastructure or which has contracted for natural gas utility infrastructure with another utility.

Source: Laws 1999, LB 78, § 6; R.S.1943, (2004), § 57-1305; Laws 2006, LB 1249, § 9.

66-1863 Enlargement or extension of area; review by Public Service Commission; when required.

(1) Except as provided in subsections (2) and (3) of this section, no jurisdictional utility or metropolitan utilities district proposing to extend or enlarge its natural gas service area or extend or enlarge its natural gas mains or natural gas services after July 14, 2006, shall undertake or pursue such extension or enlargement until the proposal has been submitted to the commission for its determination that the proposed extension or enlargement is in the public interest. Any proposal for extension or enlargement shall be filed with the commission, and the commission shall promptly make such application public in such manner as the commission deems appropriate. The commission shall schedule the matter for hearing and determination in the county where the extension or enlargement is proposed, and the matter shall be subject to the applicable procedures provided in the State Natural Gas Regulation Act and sections 75-112, 75-129, and 75-134 to 75-136. In making a determination whether a proposed extension or enlargement is in the public interest, the

commission shall consider the factors set forth in sections 66-1860 and 66-1861. Ratepayers of the jurisdictional utility or the metropolitan utilities district shall have the right to appear and present testimony before the commission on any matter submitted to the commission under sections 66-1858 to 66-1864 and shall have such testimony considered by the commission in arriving at its determination.

(2) If any metropolitan utilities district proposes to extend or enlarge its system within the corporate boundaries of the city of the metropolitan class it serves or within the boundaries of the extraterritorial zoning jurisdiction of such city, the metropolitan utilities district may pursue such extension or enlargement without the need for commission approval or the requirement to file and request permission to pursue such extension or enlargement.

(3) If no person or entity has filed with the commission a protest alleging that the proposed extension or enlargement is not in the public interest within fifteen business days after the date upon which the application was made public, the enlargement or extension shall be conclusively presumed to be in the public interest and the jurisdictional utility or metropolitan utilities district may proceed with the extension or enlargement without further commission action.

Source: Laws 1999, LB 78, § 7; R.S.1943, (2004), § 57-1306; Laws 2006, LB 1249, § 10.

This section specifically gives the Nebraska Public Service Commission jurisdiction to determine whether extensions or enlargements are in the public interest. Metropolitan Util. Dist. v. Aquila, 271 Neb. 454, 712 N.W.2d 280 (2006).

66-1864 Enlargement or extension of area; records; open to public; use.

All books, records, vouchers, papers, contracts, engineering designs, and any other data of the metropolitan utilities district relating to the public interest of an extension or enlargement of natural gas mains or natural gas services or relating to natural gas service areas, whether in written or electronic form, shall be open and made available for public inspection, investigation, comment, or protest upon reasonable request during business hours, except that such books, records, vouchers, papers, contracts, designs, and other data shall be subject to section 84-712.05. Any books, records, vouchers, papers, contracts, designs, or other data not made available to the metropolitan utilities district or jurisdictional utility with regard to a proceeding before the commission regarding matters arising pursuant to sections 66-1858 to 66-1864 shall not be considered by the commission in determining whether an enlargement or extension is in the public interest.

Source: Laws 1999, LB 78, § 8; R.S.1943, (2004), § 57-1307; Laws 2006, LB 1249, § 11.

66-1865 Jurisdictional utility; application and proposed rate schedules; filing; commission; powers.

(1) Beginning January 1, 2010, a jurisdictional utility may file an application and proposed rate schedules with the commission to establish or change infrastructure system replacement cost recovery charge rate schedules that will allow for the adjustment of the jurisdictional utility's rates and charges to provide for the recovery of costs for eligible infrastructure system replacements. The commission shall not approve any infrastructure system replacement cost recovery charge rate schedules if such schedules would produce total annual-

ized infrastructure system replacement cost recovery charge revenue below the lesser of one million dollars or one-half percent of the jurisdictional utility's base revenue level approved by the commission in the jurisdictional utility's most recent general rate proceeding. The commission shall not approve any infrastructure system replacement cost recovery charge rate schedules if such schedules would produce total annualized infrastructure system replacement cost recovery charge revenue exceeding ten percent of the jurisdictional utility's base revenue level approved by the commission in the jurisdictional utility's most recent general rate proceeding. Any infrastructure system replacement cost recovery charge rate schedules and any future changes thereto shall be calculated and implemented in accordance with the State Natural Gas Regulation Act. Infrastructure system replacement cost recovery charge revenue shall be subject to a refund based upon a finding and order of the commission to the extent provided in subsections (6) and (8) of section 66-1866 or as approved by the affected cities to the extent provided in subsection (6) and subdivision (7)(c) of section 66-1867.

(2) The commission shall not approve any infrastructure system replacement cost recovery charge rate schedules for any jurisdictional utility that has not had a general rate proceeding decided or dismissed by issuance of a commission order within the sixty months immediately preceding the application by the jurisdictional utility for an infrastructure system replacement cost recovery charge.

(3) A jurisdictional utility shall not collect an infrastructure system replacement cost recovery charge rate for a period exceeding sixty months after its initial approval unless within such sixty-month period the jurisdictional utility has filed for or is the subject of a new general rate proceeding, except that the infrastructure system replacement cost recovery charge rate may be collected until the effective date of new rate schedules established as a result of the new general rate proceeding or until the general rate proceeding is otherwise decided or dismissed by issuance of a commission order without new rates being established.

Source: Laws 2009, LB658, § 4.

66-1866 Jurisdictional utility; prior filing not subject to negotiations; application for infrastructure system replacement cost recovery charge; duties; public advocate; duties; commission; powers; change in rate schedules.

(1) This section applies to applications for an infrastructure system replacement cost recovery charge by a jurisdictional utility whose last general rate filing was not the subject of negotiations with affected cities as provided for in section 66-1838.

(2) When a jurisdictional utility governed by this section files an application with the commission seeking to establish or change any infrastructure system replacement cost recovery charge rate schedules, it shall submit to the commission with the application proposed infrastructure system replacement cost recovery charge rate schedules and supporting documentation regarding the calculation of the proposed infrastructure system replacement cost recovery charge rate schedules, including (a) a list of eligible projects, (b) a description of the projects, (c) the location of the projects, (d) the purpose of the projects, (e) the dates construction began and ended, (f) the total expenses for each project at completion, and (g) the extent to which such expenses are eligible for

inclusion in the calculation of the infrastructure system replacement cost recovery charge.

(3)(a) When an application, along with any associated proposed rate schedules and documentation, is filed pursuant to subsection (2) of this section, the public advocate shall conduct an examination of the proposed infrastructure system replacement cost recovery charge rate schedules.

(b) The public advocate shall cause an examination to be made of information regarding the jurisdictional utility to confirm that the underlying costs are in accordance with the State Natural Gas Regulation Act and to confirm proper calculation of the proposed infrastructure system replacement cost recovery charge rates and rate schedules. The commission shall require a report regarding such examination to be prepared and filed with the commission not later than sixty days after the application is filed. No other revenue requirement or ratemaking issue shall be examined in consideration of the application or associated proposed rate schedules filed pursuant to the act unless the consideration of such affects the determination of the validity of the proposed infrastructure system replacement cost recovery charge rate schedules.

(c) The commission shall hold a hearing on the application and any associated rate schedules at which the public advocate shall present his or her report and shall act as trial staff before the commission. The commission shall issue an order to become effective not later than one hundred twenty days after the application is filed, except that the commission may, for good cause, extend such period for an additional thirty days.

(d) If the commission finds that an application complies with the requirements of the act, the commission shall enter an order authorizing the jurisdictional utility to impose an infrastructure system replacement cost recovery charge rate that is sufficient to recover appropriate pretax revenue, as determined by the commission pursuant to the act.

(4) A jurisdictional utility may apply for a change in any infrastructure system replacement cost recovery charge rate schedules approved pursuant to this section no more than once in any twelve-month period. Any such application for a change shall be pursued in the manner provided for in this section.

(5) In determining the appropriate pretax revenue, the commission shall consider the following factors:

(a) The net original cost of eligible infrastructure system replacements. For purposes of this section, the net original cost means the original cost of eligible infrastructure system replacements minus associated retirements of existing infrastructure;

(b) The accumulated deferred income taxes associated with the eligible infrastructure system replacements;

(c) The accumulated depreciation associated with the eligible infrastructure system replacements;

(d) The state, federal, and local income tax or excise tax rates at the time of such determination;

(e) The jurisdictional utility's actual regulatory capital structure as determined during the most recent general rate proceeding of the jurisdictional utility;

(f) The actual cost rates for the jurisdictional utility's debt and preferred stock as determined during the most recent general rate proceeding of the jurisdictional utility;

(g) The jurisdictional utility's cost of common equity as determined during the most recent general rate proceeding of the jurisdictional utility; and

(h) The depreciation rates applicable to the eligible infrastructure system replacements at the time of the most recent general rate proceeding of the jurisdictional utility.

(6)(a) The monthly infrastructure system replacement cost recovery charge rate shall be allocated among the jurisdictional utility's classes of customers in the same manner as costs for the same type of facilities were allocated among classes of customers in the jurisdictional utility's most recent general rate proceeding. An infrastructure system replacement cost recovery charge rate shall be assessed to customers as a monthly fixed charge and not based on volumetric consumption. Such monthly charge shall not increase more than fifty cents per residential customer over the base rates in effect at the time of the initial filing for any infrastructure system replacement cost recovery charge rate schedules. Thereafter, each subsequent filing shall not increase the monthly charge by more than fifty cents per residential customer over that charge in existence at the time of the most recent application for any infrastructure system replacement cost recovery charge rate schedules.

(b) At the end of each twelve-month period during which the infrastructure system replacement cost recovery charge rate schedules are in effect, the jurisdictional utility shall reconcile the differences between the revenue resulting from the infrastructure system replacement cost recovery charge and the appropriate pretax revenue as found by the commission for that period and shall submit the reconciliation and any proposed infrastructure system replacement cost recovery charge rate schedules adjustment to the commission for approval to recover or refund the difference, as appropriate, through adjustments of the infrastructure system replacement cost recovery charge rate.

(7)(a) A jurisdictional utility that has implemented any infrastructure system replacement cost recovery charge rate schedules pursuant to the act shall cease to collect such charges when new base rates and charges become effective for the jurisdictional utility following a commission order establishing customer rates in a general rate proceeding.

(b) In any subsequent general rate proceeding involving a jurisdictional utility which is collecting charges pursuant to any infrastructure system replacement cost recovery charge rate schedules, the commission shall reconcile any previously unreconciled infrastructure system replacement cost recovery charge revenue as necessary to ensure that the revenue matches as closely as possible to the appropriate pretax revenue as found by the commission for that period.

(8) In the event the commission disallows, during a subsequent general rate proceeding, recovery of costs associated with eligible infrastructure system replacements previously included in any infrastructure system replacement cost recovery charge rate schedules, the commission shall order the jurisdictional utility to make such rate adjustments as necessary to recognize and account for any such overcollections.

(9) Nothing in this section shall be construed to limit the authority of the commission to review and consider infrastructure system replacement costs

along with other costs during any general rate proceeding of any jurisdictional utility.

Source: Laws 2009, LB658, § 5.

66-1867 Jurisdictional utility; prior filing subject to negotiations; application for infrastructure system replacement cost recovery charge; duties; affected cities; powers; commission; powers; change in rate schedules.

(1) This section applies to applications for an infrastructure system replacement cost recovery charge by a jurisdictional utility whose last general rate filing was the subject of negotiations with affected cities as provided for in section 66-1838.

(2) When a jurisdictional utility governed by this section files an application with the commission seeking to establish or change any infrastructure system replacement cost recovery charge rate schedules, it shall submit proposed infrastructure system replacement cost recovery charge rate schedules and supporting documentation regarding the calculation of the proposed infrastructure system replacement cost recovery charge rate schedules with the application and shall provide written notice to each city that will be affected by the proposed infrastructure system replacement cost recovery charge rates simultaneously with the filing with the commission. Such notice shall identify the cities that will be affected by the filing. The jurisdictional utility shall file copies of the notice with the commission and shall file with the affected cities the information prescribed by this section with each city affected by the proposed infrastructure system replacement cost recovery charge in electronic or digital form or, upon request, in paper form.

(3) The jurisdictional utility shall file with the cities and the commission the infrastructure system replacement cost recovery charge rate schedules and supporting documentation regarding the calculation of the proposed infrastructure system replacement cost recovery charge rate schedules, including (a) a list of eligible projects, (b) a description of the projects, (c) the location of the projects, (d) the purpose of the projects, (e) the dates construction began and ended, (f) the total expenses for each project at completion, and (g) the extent to which such expenses are eligible for inclusion in the calculation of the infrastructure system replacement cost recovery charge rate.

(4)(a) Affected cities shall have a period of thirty days after the date of such filing within which to adopt a resolution evidencing their intent to negotiate an infrastructure system replacement cost recovery charge rate with the jurisdictional utility. A copy of the resolution in support of negotiations adopted by each city under this section or a copy of the resolution of the rejection of the offer of negotiations shall be provided to the commission and the jurisdictional utility within seven days after its adoption.

(b) If the commission receives resolutions adopted prior to the expiration of the thirty-day period provided for in subdivision (a) of this subsection evidencing the intent from cities representing more than fifty percent of the ratepayers within the affected cities to negotiate with the jurisdictional utility an infrastructure system replacement cost recovery charge rate, the commission shall certify the case for negotiation between such cities and the jurisdictional utility and shall take no action upon the application and filings regarding such charge until the negotiation period and any stipulated extension has expired or an agreement on rates is submitted, whichever occurs first.

(c) If the commission receives copies of resolutions from cities representing more than fifty percent of the ratepayers within the affected cities which expressly reject negotiations, the infrastructure system replacement cost recovery charge rate review shall proceed immediately from the date when the commission makes such a determination in the manner provided for in section 66-1866.

(d) If commission certification to pursue negotiations is entered, the cities that have adopted resolutions to negotiate and the jurisdictional utility shall enter into good faith negotiations over the proposed infrastructure system replacement cost recovery charge rate.

(e) Negotiations between the cities and the jurisdictional utility shall continue for a period not to exceed thirty days after the date of the commission's certification to pursue negotiations, except that the parties may mutually agree to extend such period to a future date certain and shall provide such stipulation to the commission.

(f) If the cities and the jurisdictional utility reach agreement upon the proposed infrastructure system replacement cost recovery charge rate schedules, such agreement shall be put into writing and filed with the commission. If cities representing more than fifty percent of the ratepayers within the cities affected by the proposed infrastructure system replacement cost recovery charge rate schedules enter into an agreement upon such charges and the agreement is filed with and approved by the commission, such infrastructure system replacement cost recovery charge rate schedules shall be effective and binding upon all of the jurisdictional utility's ratepayers within the affected cities. The commission shall enter its order either approving or rejecting such infrastructure system replacement cost recovery charge rate schedules within thirty days after the date of the filing of the agreement with the commission.

(g) Any agreement filed with the commission shall be presumed in the public interest, and absent any clear evidence on the face of the agreement that it is contrary to the standards and provisions of the State Natural Gas Regulation Act, the agreement shall be approved by the commission.

(h) If the negotiations fail to result in an agreement upon any infrastructure system replacement cost recovery charge rate schedules within the time permitted by this section for such negotiations, the jurisdictional utility may formally notify the commission of this fact and the matter shall be submitted for determination by the commission as a contested proceeding with the affected cities as one party and the jurisdictional utility as the other. The affected cities and the jurisdictional utility shall submit any documents, data, or information in support of the city's or jurisdictional utility's position to the commission in a report to be filed not later than fourteen days after the commission receives notice that negotiations have failed and formally notifies the parties that it will be hearing the matter as a contested case. The commission shall hold a hearing in the case not later than thirty-five days after the receipt of the reports of both parties. In determining the appropriate pretax revenue of the jurisdictional utility, the commission shall consider the factors set out in subsection (5) of section 66-1866. A final determination by the commission shall be rendered by the commission within twenty-one days after the adjournment of the hearing.

(i) If information filed pursuant to subdivision (h) of this subsection is not considered a public record within the meaning of sections 84-712 to 84-712.09, such information may be submitted to the commission by the jurisdictional

utility or affected cities for the limited purpose of consideration by the commission under this section subject to a protective order issued by the commission.

(j) Within thirty days after any infrastructure system replacement cost recovery charge rate schedules approved by the commission pursuant to this section become effective, copies of all documents relating to such infrastructure system replacement cost recovery charge rate schedules, except those determined to be confidential under rules and regulations adopted and promulgated by the commission or that may be withheld from the public pursuant to subdivision (h) or (j) of this subsection, shall be available for public inspection in every office and facility open to the general public of the jurisdictional utility in this state.

(5) A jurisdictional utility may apply for a change in any infrastructure system replacement cost recovery charge rate schedules approved pursuant to this section no more than once in any twelve-month period. Any such application for a change shall be pursued in the manner provided for in this section.

(6)(a) The monthly infrastructure system replacement cost recovery charge rate shall be allocated among the jurisdictional utility's classes of customers in the same manner as costs for the same type of facilities were allocated among classes of customers in the jurisdictional utility's most recent general rate proceeding. An infrastructure system replacement cost recovery charge rate shall be assessed to customers as a monthly fixed charge and not based on volumetric consumption. Such monthly charge shall not increase more than fifty cents per residential customer over the base rates in effect at the time of the initial filing for any infrastructure system replacement cost recovery charge rate schedules. Thereafter, each subsequent filing shall not increase the monthly charge by more than fifty cents per residential customer over that charge in existence at the time of the most recent application for any infrastructure system replacement cost recovery charge rate schedules.

(b) At the end of each twelve-month period during which the infrastructure system replacement cost recovery charge rate schedules are in effect, the jurisdictional utility shall reconcile the differences between the revenue resulting from an infrastructure system replacement cost recovery charge and the appropriate pretax revenue for that period and shall submit the reconciliation and any proposed infrastructure system replacement cost recovery charge rate schedules adjustment to the affected cities for approval to recover or refund the difference, as appropriate, through adjustments of the infrastructure system replacement cost recovery charge rate. Review and approval of such reconciliation or adjustment shall proceed in the manner set out in the commission order on the initial application for an infrastructure system replacement cost recovery charge rate.

(7)(a) A jurisdictional utility that has implemented any infrastructure system replacement cost recovery charge rate schedules pursuant to this section shall cease to collect such charges when new base rates and charges become effective for the jurisdictional utility following a commission order establishing or approving customer rates in a subsequent general rate proceeding.

(b) In any subsequent general rate proceeding involving a jurisdictional utility which is collecting charges pursuant to any infrastructure system replacement cost recovery charge rate schedules, the new general rates shall reflect a reconciliation of any previously unreconciled infrastructure system replacement cost recovery charge revenue as necessary to ensure that the

revenue matches as closely as possible to the appropriate pretax revenue for that period as determined in the general rate proceeding.

(c) If, during a subsequent general rate proceeding, the recovery of certain costs associated with eligible infrastructure system replacements are disallowed, the new general rates approved shall include such adjustments as are necessary to recognize and account for any overcollections.

(8) Nothing in this section shall be construed to limit the authority of the commission or affected cities engaged in negotiations regarding a general rate filing with a jurisdictional utility to review and consider infrastructure system replacement cost recovery charge rates along with other costs during any general rate proceeding of such jurisdictional utility.

Source: Laws 2009, LB658, § 6.

66-1868 Rural infrastructure development; rural infrastructure surcharge tariff; filing in additional filings; agreement; contents; gas supply cost adjustment tariff; collection; refund; billing.

(1) Prior to undertaking rural infrastructure development pursuant to sections 66-2101 to 66-2107, a jurisdictional utility shall file a rural infrastructure surcharge tariff with the commission consistent with the agreement negotiated pursuant to subsection (2) of this section. The filing may be a joint filing with other jurisdictional utilities and may affect more than one electing city. With the rural infrastructure surcharge tariff, the jurisdictional utility shall file:

- (a) A map of the unserved or underserved area it proposes to serve;
- (b) A description of the project;
- (c) Information regarding support of the project from individuals, businesses, or government entities;
- (d) An executed agreement with the electing city or cities; and
- (e) The factors the jurisdictional utility has considered pursuant to section 66-2105.

(2) An agreement submitted pursuant to subdivision (1)(d) of this section may include, but shall not be limited to, terms and conditions that address the following:

- (a) Inclusion of representatives of the following possible parties: The electing city or cities; the jurisdictional utility; an interstate natural gas pipeline company; current and prospective customers; and any other interested parties;
- (b) Impact on other cities, jurisdictional utilities, interstate natural gas pipeline companies, and current and prospective customers;
- (c) The possibility of a joint filing with other jurisdictional utilities and agreements with other electing cities;
- (d) The factors set forth in section 66-2105;
- (e) The capacity of the project;
- (f) The potential to enhance demand for natural gas capacity created by the project;
- (g) Ownership of the project or parts of the project;
- (h) Participation by the electing city or cities and other parties to determine the customer or customers which will receive the additional natural gas capacity created by the project;

(i) Any matters involving rights-of-way and easements and fees, taxes, and surcharges related thereto;

(j) The payment of costs of the rural infrastructure development, including, but not limited to: (i) Proposed rate increases for customers of the electing city or cities and within a city's extraterritorial zoning jurisdiction, including direct customers and residential or commercial customers; (ii) any city funds, including funds from the Local Option Municipal Economic Development Act, which may be used to pay for consultants, issue bonds, lower proposed rate increases, or otherwise finance the rural infrastructure development project; and (iii) contributions from direct customers or other sources, including, but not limited to, state or federal grants or loans; and

(k) Reimbursement of costs to the electing city or cities or ratepayers of the electing city or cities, including ratepayers in a city's extraterritorial zoning jurisdiction.

(3) A jurisdictional utility may file a gas supply cost adjustment tariff with the commission, consistent with the agreement negotiated pursuant to subsection (2) of this section, that adjusts the jurisdictional utility's residential or commercial customer rates to provide for the recovery of, but not limited to, costs related to ongoing gas supply, transmission, pipeline capacity, storage, financial instruments, or interstate pipeline charges or other related costs for rural infrastructure development.

(4) A rural infrastructure surcharge tariff or gas supply cost adjustment tariff shall become effective immediately upon filing with the commission of all items required under this section.

(5) Any rural infrastructure surcharge tariff or gas supply cost adjustment tariff, and any future changes thereto, applied to high-volume customers obtaining direct service and to general system residential or commercial customers subject to jurisdiction of the commission shall be calculated and implemented in a manner proposed by the jurisdictional utility consistent with the agreement negotiated pursuant to subsection (2) of this section.

(6) The rural infrastructure surcharge tariff or gas supply cost adjustment tariff, and any future changes thereto, shall first be applied to customers receiving direct service from the rural infrastructure development. If such resulting rates are uneconomic or commercially unreasonable to those customers, the jurisdictional utility shall recover the costs above the rates determined by the jurisdictional utility to be economical or commercially reasonable from general system residential or commercial customers in the electing city in a manner proposed by the jurisdictional utility consistent with the agreement negotiated pursuant to subsection (2) of this section.

(7) A jurisdictional utility may collect a rural infrastructure surcharge or gas supply cost adjustment until costs are fully recovered even if the jurisdictional utility has not filed for or is the subject of a new general rate proceeding within that period of time.

(8) No more than once annually, the commission may initiate a proceeding and conduct a public hearing to determine whether the rural infrastructure surcharge of a jurisdictional utility reflects the actual costs of the rural infrastructure development and to reconcile any amounts collected from ratepayers with actual costs incurred by the jurisdictional utility. The commission shall make a decision as to whether the rural infrastructure surcharge reflects actual costs within ninety days after initiating the proceeding. The rural infrastructure

surcharge shall be presumed to reflect the actual costs of the rural infrastructure development, unless the contrary is shown.

(9) Any refund, including interest thereon, shall be made to presently served ratepayers in the electing city by an appropriate adjustment shown as a credit on subsequent bills during a period selected by the jurisdictional utility, not to exceed twelve months, or by a cash refund at the option of the jurisdictional utility. The jurisdictional utility shall not be required to provide such refunds to ratepayers served at competitively set or negotiated rates or under alternative rate mechanisms when the ratepayer is paying less than the full rate determined pursuant to the gas supply cost adjustment rate schedule or under a customer choice or unbundling program.

(10) A jurisdictional utility is not required to proceed with rural infrastructure development in an unserved or underserved area unless required to do so under an agreement with an electing city or cities.

(11) A jurisdictional utility utilizing a rural infrastructure surcharge shall separately identify the surcharge on each customer's bill using language sufficiently clear to identify the purpose of the surcharge.

(12) For purposes of this section:

(a) City means a city of the first or second class or village;

(b) Electing city means a city that has elected through its governing body to benefit from additional natural gas supply made possible by a rural infrastructure development and has executed an agreement with the jurisdictional utility serving the city and the city's extraterritorial zoning jurisdiction to provide the additional natural gas supply in accordance with terms and conditions mutually acceptable to the city and jurisdictional utility consistent with the agreement negotiated pursuant to subsection (2) of this section;

(c) Rural infrastructure development means planning, financing, development, acquisition, construction, owning, operating, and maintaining a natural gas pipeline facility or entering into agreements with an interstate pipeline for existing, new, or expanded capacity on the interstate pipeline's system for the transportation of natural gas necessary to supply unserved or underserved areas; and

(d) Rural infrastructure surcharge means a surcharge through which a jurisdictional utility may recover costs for rural infrastructure development.

Source: Laws 2012, LB1115, § 10.

Cross References

Local Option Municipal Economic Development Act, see section 18-2701.

ARTICLE 19

WIND MEASUREMENT EQUIPMENT

Section
66-1901. Repealed. Laws 2015, LB 469, § 19.

66-1901 Repealed. Laws 2015, LB 469, § 19.

ARTICLE 20

NATURAL GAS FUEL BOARD

Section

66-2001. Natural Gas Fuel Board; established; members; terms; vacancy; meetings; duties; State Energy Office; administrative support.

66-2001 Natural Gas Fuel Board; established; members; terms; vacancy; meetings; duties; State Energy Office; administrative support.

(1) The Natural Gas Fuel Board is hereby established to advise the State Energy Office regarding the promotion of natural gas as a motor vehicle fuel in Nebraska. The board shall provide recommendations relating to:

(a) Distribution, infrastructure, and workforce development for natural gas to be used as a motor vehicle fuel;

(b) Loans, grants, and tax incentives to encourage the use of natural gas as a motor vehicle fuel for individuals and public and private fleets; and

(c) Such other matters as it deems appropriate.

(2) The board shall consist of eight members appointed by the Governor. The Governor shall make the initial appointments by October 1, 2012. The board shall include:

(a) One member representing a jurisdictional utility as defined in section 66-1802;

(b) One member representing a metropolitan utilities district;

(c) One member representing the interests of the transportation industry in the state;

(d) One member representing the interests of the business community in the state, specifically fueling station owners or operators;

(e) One member representing natural gas marketers or pipelines in the state;

(f) One member representing automobile dealerships or repair businesses in the state;

(g) One member representing labor interests in the state; and

(h) One member representing environmental interests in the state, specifically air quality.

(3) All appointments shall be subject to the approval of a majority of the members of the Legislature if the Legislature is in session, and if the Legislature is not in session, any appointment to fill a vacancy shall be temporary until the next session of the Legislature, at which time a majority of the members of the Legislature may approve or disapprove such appointment.

(4) Members shall be appointed for terms of four years, except that of the initial appointees the terms of the members representing a jurisdictional utility and a metropolitan utilities district shall expire on September 30, 2015, the terms of the members representing the transportation industry, the business community, natural gas marketers or pipelines, and automobile dealerships or repair businesses shall expire on September 30, 2014, and the terms of the members representing labor and environmental interests shall expire on Sep-

tember 30, 2013. Members may be reappointed. A member shall serve until a successor is appointed and qualified.

(5) A vacancy on the board shall exist in the event of death, disability, resignation, or removal for cause of a member. Any vacancy on the board arising other than from the expiration of a term shall be filled by appointment for the unexpired portion of the term. An appointment to fill a vacancy shall be made by the Governor with the approval of a majority of the Legislature, and any person so appointed shall have the same qualifications as the person whom he or she succeeds.

(6) The board shall meet at least once annually.

(7) The members shall not be reimbursed for expenses associated with carrying out their duties as members.

(8) The State Energy Office shall provide administrative support to the board as necessary so that the board may carry out its duties.

Source: Laws 2012, LB1087, § 1.

ARTICLE 21

RURAL INFRASTRUCTURE DEVELOPMENT

Section	
66-2101.	Legislative declaration.
66-2102.	Terms, defined.
66-2103.	City; utilization of funds; powers.
66-2104.	Rural infrastructure development; jurisdictional utility; powers.
66-2105.	Jurisdictional utility; consider factors.
66-2106.	Jurisdictional utility; applicability of other law.
66-2107.	Sections; applicability.

66-2101 Legislative declaration.

The Legislature declares it is the public policy of this state to provide adequate natural gas pipeline facilities and service in order to expand and diversify the Nebraska economy resulting in increased employment, new and expanded businesses and industries, and new and expanded sources of tax revenue.

Source: Laws 2012, LB1115, § 1.

66-2102 Terms, defined.

For purposes of sections 66-2101 to 66-2107:

- (1) City means a city of the first or second class or village;
- (2) Jurisdictional utility has the same meaning as in section 66-1802;
- (3) Natural gas pipeline facility means a pipeline, pump, compressor, or storage or other facility, structure, or property necessary, useful, or incidental in the transportation of natural gas; and
- (4) Rural infrastructure development means planning, financing, development, acquisition, construction, owning, operating, and maintaining a natural gas pipeline facility or entering into agreements with an interstate pipeline for existing, new, or expanded capacity on the interstate pipeline’s system for the transportation of natural gas necessary to supply unserved or underserved areas; and

(5) Unserved or underserved area means an area in this state lacking adequate natural gas pipeline capacity to meet the demand of existing or potential end-use customers as determined by the jurisdictional utility presently serving the area. Unserved or underserved area does not include any area within a city of the primary or metropolitan class.

Source: Laws 2012, LB1115, § 2.

66-2103 City; utilization of funds; powers.

A city that has been authorized to utilize funds pursuant to the Local Option Municipal Economic Development Act for purposes of sections 66-1868 and 66-2101 to 66-2107 shall have all necessary powers to implement and to carry out its powers and duties under such sections.

Source: Laws 2012, LB1115, § 3.

Cross References

Local Option Municipal Economic Development Act, see section 18-2701.

66-2104 Rural infrastructure development; jurisdictional utility; powers.

A jurisdictional utility may undertake rural infrastructure development necessary to supply unserved or underserved areas in or adjacent to areas presently served by the jurisdictional utility and not served by another jurisdictional utility.

Source: Laws 2012, LB1115, § 4.

66-2105 Jurisdictional utility; consider factors.

Prior to undertaking rural infrastructure development, a jurisdictional utility shall consider factors such as the economic impact to the area, economic feasibility, whether other options may be more in the public interest, such as utilization of any existing or planned interstate or intrastate pipeline facilities of private persons, companies, firms, or corporations, and the likelihood of successful completion and ongoing operation of the facility.

Source: Laws 2012, LB1115, § 5.

66-2106 Jurisdictional utility; applicability of other law.

A jurisdictional utility shall not be subject to the State Natural Gas Regulation Act to the extent it is exercising power granted in section 66-2104 except as specifically provided otherwise but shall be subject to sections 75-501 to 75-503.

Source: Laws 2012, LB1115, § 6.

Cross References

State Natural Gas Regulation Act, see section 66-1801.

66-2107 Sections; applicability.

Sections 66-2101 to 66-2106 do not apply to a natural gas utility owned or operated by a city or a metropolitan utilities district.

Source: Laws 2012, LB1115, § 7.

PARTNERSHIPS

CHAPTER 67 PARTNERSHIPS

Article.

1. General Partnerships. Repealed.
2. Nebraska Uniform Limited Partnership Act. 67-201 to 67-232. Repealed.
 - Part I—General Provisions. 67-233 to 67-239.01.
 - Part II—Formation; Certificate of Limited Partnership. 67-240 to 67-248.02.
 - Part III—Limited Partners. 67-249 to 67-253.
 - Part IV—General Partners. 67-254 to 67-258.
 - Part V—Finance. 67-259 to 67-262.
 - Part VI—Distributions and Withdrawal. 67-263 to 67-270.
 - Part VII—Assignment of Partnership Interests. 67-271 to 67-275.
 - Part VIII—Dissolution. 67-276 to 67-279.
 - Part IX—Foreign Limited Partnerships. 67-280 to 67-287.
 - Part X—Derivative Actions. 67-288 to 67-291.
 - Part XI—Miscellaneous. 67-292 to 67-296.
 - Part XII—Conversion. 67-297 to 67-2,100.
3. Uniform Partnership Act. Repealed.
4. Uniform Partnership Act of 1998.
 - Part I—General Provisions. 67-401 to 67-408.
 - Part II—Nature of Partnership. 67-409 to 67-412.
 - Part III—Relations of Partners to Persons Dealing with Partnership. 67-413 to 67-420.
 - Part IV—Relations of Partners to Each Other and to Partnership. 67-421 to 67-426.
 - Part V—Transferees and Creditors of Partner. 67-427 to 67-430.
 - Part VI—Partner’s Dissociation. 67-431 to 67-433.
 - Part VII—Partner’s Dissociation when Business Not Wound Up. 67-434 to 67-438.
 - Part VIII—Winding Up Partnership Business. 67-439 to 67-445.
 - Part IX—Conversions and Mergers. 67-446 to 67-453.
 - Part X—Limited Liability Partnership. 67-454 to 67-456.
 - Part XI—Foreign Limited Liability Partnership. 67-457 to 67-461.
 - Part XII—Miscellaneous Provisions. 67-462 to 67-467.

Cross References

Actions by and against:

- Judgment, insufficient partnership property, see section 25-316.
- Partnership name, may sue and be sued by, see section 25-313.
- Process, service of, see section 25-512.01.
- Security for costs, requirement, see section 25-315.
- Venue, see section 25-403.02.

Health insurance, group policy, partners, see section 44-760.

Indictments involving partnership property, ownership, how alleged, see section 29-1507.

Insurance of partnership interests, policy terms, see section 44-377.

Life insurance, group policy, partners, see section 44-1602 et seq.

Public Accountancy Act, see section 1-105.

Receivers, appointment in actions between partners, see section 25-1081.

Service of process, partnership appointed by court, see section 25-506.01.

Taxation, listing of personal property, see section 77-1201 et seq.

Trade name, registration requirements, see sections 87-208 to 87-219.01.

ARTICLE 1

GENERAL PARTNERSHIPS

Section

- 67-101. Repealed. Laws 2008, LB 707, § 5.
- 67-102. Repealed. Laws 2008, LB 707, § 5.
- 67-103. Repealed. Laws 2008, LB 707, § 5.

§ 67-101

PARTNERSHIPS

Section

- 67-104. Repealed. Laws 2008, LB 707, § 5.
- 67-105. Repealed. Laws 2008, LB 707, § 5.
- 67-106. Repealed. Laws 2008, LB 707, § 5.

67-101 Repealed. Laws 2008, LB 707, § 5.

67-102 Repealed. Laws 2008, LB 707, § 5.

67-103 Repealed. Laws 2008, LB 707, § 5.

67-104 Repealed. Laws 2008, LB 707, § 5.

67-105 Repealed. Laws 2008, LB 707, § 5.

67-106 Repealed. Laws 2008, LB 707, § 5.

ARTICLE 2

NEBRASKA UNIFORM LIMITED PARTNERSHIP ACT

Section

- 67-201. Repealed. Laws 1981, LB 272, § 67.
- 67-202. Repealed. Laws 1981, LB 272, § 67.
- 67-203. Repealed. Laws 1981, LB 272, § 67.
- 67-204. Repealed. Laws 1981, LB 272, § 67.
- 67-205. Repealed. Laws 1981, LB 272, § 67.
- 67-206. Repealed. Laws 1981, LB 272, § 67.
- 67-207. Repealed. Laws 1981, LB 272, § 67.
- 67-208. Repealed. Laws 1981, LB 272, § 67.
- 67-209. Repealed. Laws 1981, LB 272, § 67.
- 67-210. Repealed. Laws 1981, LB 272, § 67.
- 67-211. Repealed. Laws 1981, LB 272, § 67.
- 67-212. Repealed. Laws 1981, LB 272, § 67.
- 67-213. Repealed. Laws 1981, LB 272, § 67.
- 67-214. Repealed. Laws 1981, LB 272, § 67.
- 67-215. Repealed. Laws 1981, LB 272, § 67.
- 67-216. Repealed. Laws 1981, LB 272, § 67.
- 67-217. Repealed. Laws 1981, LB 272, § 67.
- 67-218. Repealed. Laws 1981, LB 272, § 67.
- 67-219. Repealed. Laws 1981, LB 272, § 67.
- 67-220. Repealed. Laws 1981, LB 272, § 67.
- 67-221. Repealed. Laws 1981, LB 272, § 67.
- 67-222. Repealed. Laws 1981, LB 272, § 67.
- 67-223. Repealed. Laws 1981, LB 272, § 67.
- 67-224. Repealed. Laws 1981, LB 272, § 67.
- 67-225. Repealed. Laws 1981, LB 272, § 67.
- 67-226. Repealed. Laws 1981, LB 272, § 67.
- 67-227. Repealed. Laws 1981, LB 272, § 67.
- 67-228. Repealed. Laws 1981, LB 272, § 67.
- 67-229. Repealed. Laws 1981, LB 272, § 67.
- 67-230. Repealed. Laws 1981, LB 272, § 67.
- 67-231. Repealed. Laws 1981, LB 272, § 67.
- 67-232. Repealed. Laws 1981, LB 272, § 67.

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- 67-233. Terms, defined.
- 67-234. Limited partnership name.
- 67-235. Reservation of name.
- 67-236. Specified office and agent.
- 67-237. Repealed. Laws 1989, LB 482, § 65.

NEBRASKA UNIFORM LIMITED PARTNERSHIP ACT

Section

- 67-237.01. Written partnership agreement; admission of limited partner; assignment of interest; signatures.
- 67-238. Nature of business.
- 67-239. Partner; transactions with partnership.
- 67-239.01. Partnership; indemnification authorized.

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- 67-242. Cancellation of certificate.
- 67-243. Certificates; signature; execution.
- 67-244. Certificate or agreement; execution or filing by judicial act.
- 67-245. Filing in office of Secretary of State; facsimile signature.
- 67-246. Liability for false statement in certificate; general partner; failure to file; liability.
- 67-247. Filing of certificate; effect.
- 67-248. Delivery of certificate to limited partner.
- 67-248.01. Restated certificate.
- 67-248.02. Merger or consolidation; procedure; effect.

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- 67-253. Limited partner; rights; general partner; rights; records.

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- 67-255. General partner; status; termination; when.
- 67-256. General partners; powers and liabilities.
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- 67-258. Partnership agreement; classes or groups of general partners; voting rights specified.

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- 67-266. Distribution upon withdrawal.
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- 67-274. Assignee becoming limited partner; rights and liabilities.
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67-279. Dissolution; distribution of assets.

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67-281. Foreign limited partnership; registration; contents.
67-282. Issuance of registration.
67-283. Foreign limited partnership; name; agent.
67-284. Application for registration; amendments.
67-285. Cancellation of registration; effect.
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67-286.01. Foreign limited partnerships; sections applicable.
67-287. Action by Attorney General.

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67-290. Derivative action; complaint; requirements.
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67-293. Filing fees; disposition.
67-294. Uniform Partnership Act of 1998; applicability.
67-295. Act, how construed.
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67-299. Effect of conversion.
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67-201 Repealed. Laws 1981, LB 272, § 67.

67-202 Repealed. Laws 1981, LB 272, § 67.

67-203 Repealed. Laws 1981, LB 272, § 67.

67-204 Repealed. Laws 1981, LB 272, § 67.

67-205 Repealed. Laws 1981, LB 272, § 67.

67-206 Repealed. Laws 1981, LB 272, § 67.

67-207 Repealed. Laws 1981, LB 272, § 67.

67-208 Repealed. Laws 1981, LB 272, § 67.

67-209 Repealed. Laws 1981, LB 272, § 67.

67-210 Repealed. Laws 1981, LB 272, § 67.

67-211 Repealed. Laws 1981, LB 272, § 67.

67-212 Repealed. Laws 1981, LB 272, § 67.

67-213 Repealed. Laws 1981, LB 272, § 67.

67-214 Repealed. Laws 1981, LB 272, § 67.

- 67-215 Repealed. Laws 1981, LB 272, § 67.
- 67-216 Repealed. Laws 1981, LB 272, § 67.
- 67-217 Repealed. Laws 1981, LB 272, § 67.
- 67-218 Repealed. Laws 1981, LB 272, § 67.
- 67-219 Repealed. Laws 1981, LB 272, § 67.
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- 67-221 Repealed. Laws 1981, LB 272, § 67.
- 67-222 Repealed. Laws 1981, LB 272, § 67.
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- 67-225 Repealed. Laws 1981, LB 272, § 67.
- 67-226 Repealed. Laws 1981, LB 272, § 67.
- 67-227 Repealed. Laws 1981, LB 272, § 67.
- 67-228 Repealed. Laws 1981, LB 272, § 67.
- 67-229 Repealed. Laws 1981, LB 272, § 67.
- 67-230 Repealed. Laws 1981, LB 272, § 67.
- 67-231 Repealed. Laws 1981, LB 272, § 67.
- 67-232 Repealed. Laws 1981, LB 272, § 67.

PART I—GENERAL PROVISIONS

67-233 Terms, defined.

For purposes of the Nebraska Uniform Limited Partnership Act:

- (1) Certificate of limited partnership shall mean the certificate referred to in section 67-240 and the certificate as amended or restated;
- (2) Contribution shall mean any cash, property, services rendered, or promissory note or other binding obligation to contribute cash or property or to perform services which a partner contributes to a limited partnership in his or her capacity as a partner;
- (3) Event of withdrawal of a general partner shall mean an event that causes a person to cease to be a general partner as provided in section 67-255;
- (4) Foreign limited partnership shall mean a partnership formed under the laws of any state other than this state or under the laws of any foreign country and having as partners one or more general partners and one or more limited partners;
- (5) General partner shall mean a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and, if required, named as such in the certificate of limited partnership or

similar instrument under which the limited partnership or foreign limited partnership is organized;

(6) Limited partner shall mean a person who has been admitted to a limited partnership as a limited partner as provided in the Nebraska Uniform Limited Partnership Act or, in the case of a foreign limited partnership, in accordance with the laws under which the limited partnership is formed;

(7) Limited partnership and domestic limited partnership shall mean a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners;

(8) Liquidating trustee shall mean a person, other than a general partner, but including a limited partner, carrying out the winding up of a limited partnership;

(9) Partner shall mean a limited or general partner;

(10) Partnership agreement shall mean any valid agreement, written or oral, of the partners as to the affairs of a limited partnership or foreign limited partnership and the conduct of its business;

(11) Partnership interest shall mean a partner's share of the profits and losses of a limited partnership or foreign limited partnership and the right to receive distributions of partnership assets;

(12) Person shall mean a natural person, partnership, whether general or limited and whether domestic or foreign, limited liability company, trust, estate, association, or corporation; and

(13) State shall mean a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Source: Laws 1981, LB 272, § 1; Laws 1989, LB 482, § 6; Laws 1993, LB 121, § 400.

67-234 Limited partnership name.

The name of each limited partnership as set forth in its certificate of limited partnership:

(1) Shall contain the words limited partnership or limited or the abbreviations L.P. or Ltd.;

(2) May not contain the name of a limited partner unless (i) it is also the name of a general partner, the corporate name of a corporate general partner, or the company name of a limited liability company general partner, (ii) the business of the limited partnership had been carried on under that name before the admission of that limited partner, or (iii) the use of the name of a limited partner in the name of the limited partnership is merely coincidental and not intended to mislead the public to believe that such limited partner is a general partner;

(3) Shall not be the same as or deceptively similar to, upon the records in the office of the Secretary of State, a trade name registered in this state pursuant to sections 87-208 to 87-219.01;

(4) Shall not be the same as or deceptively similar to, upon the records in the office of the Secretary of State, any other business entity name registered or on file with the Secretary of State pursuant to Nebraska law, except that a limited partnership may register under any name which is deceptively similar to, upon the records in the office of the Secretary of State, a business entity name

registered or on file with the Secretary of State pursuant to Nebraska law with the consent of the other business entity or with the transfer of such name by the other business entity, which written consent or transfer shall be filed with the Secretary of State; and

(5) May contain the following words or abbreviations of like import: Company; association; club; foundation; fund; institute; society; union; syndicate; or trust.

Source: Laws 1981, LB 272, § 2; Laws 1989, LB 482, § 7; Laws 1993, LB 121, § 401; Laws 1997, LB 44, § 10; Laws 2003, LB 464, § 7; Laws 2011, LB462, § 5.

67-235 Reservation of name.

(a) The exclusive right to the use of a name may be reserved by:

(1) Any person intending to organize a limited partnership under the Nebraska Uniform Limited Partnership Act and to adopt that name;

(2) Any domestic limited partnership or any foreign limited partnership registered in this state which, in either case, intends to adopt that name;

(3) Any foreign limited partnership intending to register in this state and currently using or intending to adopt that name; and

(4) Any person intending to organize a foreign limited partnership and intending to have it register in this state and adopt that name.

(b) The reservation shall be made by filing with the Secretary of State an application, executed by the applicant, to reserve a specified name. If the Secretary of State finds that the name is available for use by a domestic or foreign limited partnership, he or she shall reserve the name for the exclusive use of the applicant for a period of one hundred twenty days. Such reservation may be renewed or canceled by filing a notice of such fact on forms prescribed by the Secretary of State. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the Secretary of State a notice of the transfer executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

(c) A fee as set forth in section 67-293 shall be paid at the time of the initial reservation of any name, at the time of the renewal of any such reservation, and at the time of the filing of a notice of the transfer or cancellation of any such reservation.

Source: Laws 1981, LB 272, § 3; Laws 1989, LB 482, § 8.

67-236 Specified office and agent.

(a) Each limited partnership shall have and maintain in this state:

(1) An office which may but need not be a place of its business in this state; and

(2) An agent for service of process on the limited partnership, which agent must be an individual resident of this state, a domestic corporation, a foreign corporation authorized to do business in this state, a domestic limited liability company, or a foreign limited liability company authorized to do business in this state.

(b) The agent for service of process may change his, her, or its street address and post office box number, if any, to another street address and post office box

number, if any, in this state by paying a fee as set forth in section 67-293 and filing with the Secretary of State a certificate, executed by the agent, setting forth the names of the limited partnerships represented by the agent, the street address and post office box number, if any, at which the agent has maintained his, her, or its office as agent for each of such limited partnerships, and the new street address and post office box number, if any, to which the office will be changed on a given day, at which new street address and post office box number, if any, the agent will thereafter maintain his, her, or its office as agent for each of the limited partnerships recited in the certificate. Upon the filing of the certificate, the Secretary of State shall furnish to the agent a copy of the same, and thereafter or until further change of street address or post office box number, if any, as authorized by law, the office in this state of the agent for service of process for each of the limited partnerships recited in the certificate shall be located at the new street address and post office box number, if any. Filing of the certificate shall be deemed to be an amendment of the certificate of limited partnership of each limited partnership affected thereby, and each such limited partnership shall not be required to take any further action to amend its certificate of limited partnership. Any agent filing a certificate under this section shall promptly, upon the filing, deliver a copy of such certificate to each limited partnership affected thereby.

(c) The agent of one or more limited partnerships may resign and appoint a successor agent by paying a fee as set forth in section 67-293 and filing a certificate with the Secretary of State, stating that the agent is resigning and the name and street address and post office box number, if any, of the successor agent. There shall be attached to such certificate a statement executed by each affected limited partnership ratifying and approving such change of agent. Upon such filing, the successor agent shall become the agent of such limited partnerships as have ratified and approved such substitution and the successor agent's address, as stated in such certificate, shall become the address of each such limited partnership's office in this state. The Secretary of State shall furnish to the successor agent a copy of the certificate of resignation. Filing of the certificate of resignation shall be deemed to be an amendment of the certificate of limited partnership of each limited partnership affected thereby, and each such limited partnership shall not be required to take any further action to amend its certificate of limited partnership.

(d) The agent of one or more limited partnerships may resign without appointing a successor agent by paying a fee as set forth in section 67-293 and filing a certificate with the Secretary of State stating that the agent is resigning as agent for the limited partnerships identified in the certificate, but such resignation shall not become effective until one hundred twenty days after the certificate is filed. There shall be attached to the certificate an affidavit of the agent, if an individual, or of the president, a vice president, or the secretary, if a corporation, or of the manager or a member, if a limited liability company, that, at least thirty days prior to the date of filing of the certificate, notice of the resignation of the agent was sent by certified or registered mail to each limited partnership for which the agent is resigning as agent at the principal office thereof within or outside this state if known to such agent or, if not, to the last-known address of the attorney or other individual at whose request the agent was appointed for such limited partnership. After receipt of the notice of the resignation of its agent, the limited partnership for which the agent was acting shall obtain and designate a new agent to take the place of the agent so

resigning. If the limited partnership fails to obtain and designate a new agent prior to the expiration of the period of one hundred twenty days after the filing of the certificate of resignation, the certificate of such limited partnership shall be deemed to be canceled.

Source: Laws 1981, LB 272, § 4; Laws 1989, LB 482, § 9; Laws 1990, LB 1228, § 2; Laws 1993, LB 121, § 402; Laws 2008, LB383, § 1.

67-237 Repealed. Laws 1989, LB 482, § 65.

67-237.01 Written partnership agreement; admission of limited partner; assignment of interest; signatures.

A written partnership agreement (1) may provide that a person shall be admitted as a limited partner of a limited partnership or become an assignee of a partnership interest or other rights or powers of a limited partner to the extent assigned and shall become bound by the partnership agreement (i) if such person, or a representative authorized by such person orally, in writing, or by other action such as payment for a partnership interest, executes the partnership agreement or any other writing evidencing the intent of such person to become a limited partner or assignee or (ii) without such execution, if such person, or a representative authorized by such person orally, in writing, or by other action such as payment for a partnership interest, complies with the condition for becoming a limited partner or assignee as set forth in the partnership agreement or any other writing and requests, orally, in writing, or by other action such as payment for a partnership interest, that the records of the limited partnership reflect such admission or assignment and (2) shall not be unenforceable by reason of its not having been signed by a person being admitted as a limited partner or becoming an assignee as provided in this section or by reason of its having been signed by a representative as provided in this section.

Source: Laws 1989, LB 482, § 10.

67-238 Nature of business.

A limited partnership may carry on any business that a partnership without limited partners may carry on, except for the purpose of banking or effecting insurance.

Source: Laws 1981, LB 272, § 6.

67-239 Partner; transactions with partnership.

Except as provided in the partnership agreement, a partner may lend money to, borrow money from, act as a surety, guarantor, or endorser for, guarantee or assume one or more specific obligations of, provide collateral for, and transact other business with the limited partnership and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner.

Source: Laws 1981, LB 272, § 7; Laws 1989, LB 482, § 11.

67-239.01 Partnership; indemnification authorized.

Subject to such standards and restrictions, if any, as are set forth in its partnership agreement, a limited partnership may indemnify and hold harmless

any partner or other person from and against any and all claims and demands whatsoever.

Source: Laws 1989, LB 482, § 12.

PART II—FORMATION; CERTIFICATE OF LIMITED PARTNERSHIP

67-240 Certificate of limited partnership; contents; filing.

(a) In order to form a limited partnership, all persons who initially will be the general partners shall execute a certificate of limited partnership. The certificate shall be filed in the office of the Secretary of State and set forth:

- (1) The name of the limited partnership;
- (2) The address of its office and the name and street address and post office box number, if any, of the agent for service of process required to be maintained by section 67-236;
- (3) The name and the business, residence, or mailing address of each general partner; and
- (4) Any other matters the partners determine to include therein.

(b) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the Secretary of State or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

Source: Laws 1981, LB 272, § 8; Laws 1989, LB 482, § 13; Laws 2008, LB383, § 2.

67-241 Amendments to certificate; restated certificate.

(a) A certificate of limited partnership is amended by filing a certificate of amendment thereto in the office of the Secretary of State. The certificate of amendment shall be executed by any person who will be a general partner upon the effective date of the certificate of amendment and shall set forth:

- (1) The name of the limited partnership;
- (2) The date of filing the certificate; and
- (3) The amendment to the certificate.

(b) Within ninety days after the happening of any of the following events, an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be filed by any person who will be a general partner upon the effective date of the certificate of amendment and by each other general partner designated in the certificate of amendment as a new general partner:

- (1) The admission of a new general partner;
- (2) A general partner ceases to be a general partner as provided in section 67-255; or
- (3) A change in the name of the limited partnership, a change in the address of its registered office, or a change in the name or street address or post office box number, if any, of the registered agent for service of process required to be maintained by section 67-236 which is not reflected in a certificate filed pursuant to section 67-236.

(c) A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that any matter described has

changed, making the certificate false in any respect, shall promptly amend the certificate.

(d) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners determine.

(e) No person has any liability because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred to in subsection (b) of this section if the amendment is filed within the ninety-day period specified in subsection (b) of this section.

(f) A certificate of amendment shall be effective at the time of its filing with the Secretary of State or at any later time specified in the certificate of amendment if, in either case, there has been substantial compliance with the requirements of this section.

(g) A restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment.

(h) If after the dissolution of a limited partnership but prior to the filing of a certificate of cancellation as provided in section 67-242:

(1) A certificate of limited partnership has been amended to reflect the withdrawal of all general partners of a limited partnership, the certificate of limited partnership shall be amended to set forth the name and the business, residence, or mailing address of each person winding up the limited partnership affairs, each of whom shall execute and file such certificate of amendment, and each of whom shall not be subject to liability as a general partner by reason of such amendment; or

(2) A person shown on a certificate of limited partnership as a general partner is not winding up the limited partnership's affairs, the certificate of limited partnership shall be amended to add the name and the business, residence, or mailing address of each person winding up the limited partnership's affairs, each of whom shall execute and file such certificate of amendment, and each of whom shall not be subject to liability as a general partner by reason of such amendment.

Source: Laws 1981, LB 272, § 9; Laws 1989, LB 482, § 14; Laws 2008, LB383, § 3.

67-242 Cancellation of certificate.

A certificate of limited partnership shall be canceled upon the dissolution and the completion of winding up of the partnership or at any other time there are no limited partners. A certificate of cancellation (1) shall be executed by all general partners or, if the general partners are not winding up the limited partnership's affairs, then by all liquidating trustees, except that if the limited partners are winding up the limited partnership's affairs, a certificate of cancellation shall be signed by a majority of the limited partners, (2) shall be filed in the office of the Secretary of State, and (3) shall set forth:

- (i) The name of the limited partnership;
- (ii) The date of filing of its certificate of limited partnership;
- (iii) The reason for filing the certificate of cancellation;
- (iv) The effective date, which shall be a date certain, of cancellation if it is not to be effective upon the filing of the certificate; and

(v) Any other information the persons filing the certificate determine.

Source: Laws 1981, LB 272, § 10; Laws 1989, LB 482, § 15; Laws 1990, LB 1228, § 3.

67-243 Certificates; signature; execution.

(a) Any person may sign any certificate required by sections 67-240 to 67-248 to be filed in the office of the Secretary of State, a partnership agreement, or an amendment thereof by an attorney in fact. Powers of attorney relating to the signing of a certificate, partnership agreement, or amendment thereof by an attorney in fact need not be sworn to, verified, or acknowledged and need not be filed in the office of the Secretary of State but shall be retained by the person or persons exercising such powers of attorney.

(b) The execution of a certificate by a general partner constitutes an affirmation under the penalties of perjury that, to the best of the general partner's knowledge and belief, the facts stated in the certificate are true.

Source: Laws 1981, LB 272, § 11; Laws 1982, LB 589, § 2; Laws 1989, LB 482, § 16.

67-244 Certificate or agreement; execution or filing by judicial act.

(a) If a person required by sections 67-240 to 67-243 to execute or file any certificate fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the district court to direct the execution or filing of the certificate. If the court finds that it is proper for the certificate to be executed and that any person so designated has failed or refused to execute or file the certificate, it shall order the Secretary of State to execute and record an appropriate certificate.

(b) If a person required to execute a partnership agreement or amendment of an agreement fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the district court to direct the execution of the partnership agreement or amendment of the agreement. If the court finds that the partnership agreement or amendment should be executed and that any person so designated has failed or refused to do so, it shall enter an order granting appropriate relief.

Source: Laws 1981, LB 272, § 12; Laws 1989, LB 482, § 17.

67-245 Filing in office of Secretary of State; facsimile signature.

(a) Two signed copies of the certificate of limited partnership and of any certificates of amendment or cancellation, of any restated certificates of limited partnership, or of any judicial decree of amendment or cancellation shall be delivered to the Secretary of State. A person who executes a certificate as an agent, attorney in fact, or fiduciary need not exhibit evidence of his or her authority as a prerequisite to filing. Unless the Secretary of State finds that any certificate does not conform to law, upon receipt of all filing fees required by law he or she shall:

(1) Certify that the certificate of limited partnership, the certificate of amendment, the restated certificate of limited partnership, or the certificate of cancellation or any judicial decree of amendment or cancellation has been filed in his or her office by endorsing upon both duplicate originals the word Filed

and the date of the filing. This endorsement shall be conclusive of the date of its filing in the absence of proof of actual fraud;

(2) File one duplicate original in his or her office; and

(3) Return the other duplicate original to the person who filed it or his or her representative.

(b) Upon the later of the filing of a certificate of amendment or judicial decree of amendment in the office of the Secretary of State or the future effective date of a certificate of amendment or judicial decree of amendment, the certificate of limited partnership shall be amended as set forth in such certificate or decree, and upon the later of the filing of a certificate of cancellation or judicial decree of cancellation or upon the future effective date of a certificate of cancellation or a judicial decree of cancellation, the certificate of limited partnership shall be canceled.

(c) A fee as set forth in section 67-293 shall be paid at the time of the filing of a certificate of limited partnership, a certificate of amendment, or a certificate of cancellation.

(d) Any signature on any certificate authorized to be filed with the Secretary of State under any provision of the Nebraska Uniform Limited Partnership Act may be a facsimile.

Source: Laws 1981, LB 272, § 13; Laws 1989, LB 482, § 18; Laws 1990, LB 1228, § 4.

67-246 Liability for false statement in certificate; general partner; failure to file; liability.

(a) If any certificate of limited partnership or certificate of amendment or cancellation contains a false statement, one who suffers loss by reasonable reliance on the statement may recover damages for the loss from:

(1) Any general partner who knew or should have known the statement to be false at the time the certificate was executed; and

(2) Any general partner who thereafter knows that any arrangement or other fact described in the certificate is false in any material respect or has changed, making the statement false in any material respect, if the general partner had sufficient time to cancel or amend the certificate or to file a petition for its cancellation or amendment under section 67-244 before the statement was reasonably relied upon.

(b) No general partner shall have any liability for failing to cause the amendment or cancellation of a certificate to be filed or for failing to file a petition for its amendment or cancellation pursuant to subsection (a) of this section if the certificate of amendment, certificate of cancellation, or petition is filed within ninety days of the day when such general partner knew or should have known, to the extent provided in subsection (a) of this section, that the statement in the certificate was false in any material respect.

Source: Laws 1981, LB 272, § 14; Laws 1989, LB 482, § 19.

67-247 Filing of certificate; effect.

The fact that a certificate of limited partnership is on file in the office of the Secretary of State is notice that the partnership is a limited partnership and is notice of all other facts set forth in the certificate which are required to be set

forth in a certificate of limited partnership by section 67-240 and subsection (h) of section 67-241, but it is not notice of any other fact.

Source: Laws 1981, LB 272, § 15; Laws 1989, LB 482, § 20.

67-248 Delivery of certificate to limited partner.

Upon the return by the Secretary of State pursuant to section 67-245 of a certificate marked filed, the general partners shall promptly deliver or mail a copy of the certificate to each limited partner if the partnership agreement so requires.

Source: Laws 1981, LB 272, § 16; Laws 1989, LB 482, § 21.

67-248.01 Restated certificate.

(a) A limited partnership may, whenever desired, integrate into a single instrument all of the provisions of its certificate of limited partnership which are then in effect as a result of there having been filed with the Secretary of State one or more certificates or other instruments pursuant to sections 67-236 and 67-240 to 67-248, and it may at the same time further amend its certificate of limited partnership by adopting a restated certificate of limited partnership.

(b) If the restated certificate of limited partnership merely restates and integrates but does not further amend the initial certificate of limited partnership as amended or supplemented pursuant to sections 67-236 and 67-240 to 67-248, it shall be specifically designated in its heading as a Restated Certificate of Limited Partnership together with such other words as the partnership may deem appropriate and shall be executed as provided in section 67-241 and filed with the Secretary of State as provided in section 67-245. If the restated certificate restates and integrates and also further amends in any respect the certificate of limited partnership as amended or supplemented, it shall be specifically designated in its heading as an Amended and Restated Certificate of Limited Partnership together with such other words as the partnership may deem appropriate and shall be executed by at least one general partner and by each other general partner designated in the amended and restated certificate of limited partnership as a new general partner and filed as provided in section 67-245.

(c) A restated certificate of limited partnership shall state, either in its heading or in an introductory paragraph, the limited partnership's present name, the name under which it was originally filed if it has been changed, the date of filing of its original certificate of limited partnership with the Secretary of State, and the future effective date, which shall be a date certain, of the restated certificate if it is not to be effective upon the filing of the restated certificate. A restated certificate shall also state that it was duly executed and is being filed in accordance with this section. If it only restates and integrates and does not further amend the certificate of limited partnership as amended or supplemented and if there is no discrepancy between those provisions and the restated certificate, it shall state that fact as well.

(d) Upon the filing of the restated certificate of limited partnership with the Secretary of State or upon the future effective date of a restated certificate of limited partnership as provided for in the certificate, the initial certificate of limited partnership as amended or supplemented shall be superseded. The restated certificate of limited partnership, including any further amendments or changes made thereby, shall be the certificate of limited partnership of the

limited partnership, but the original effective date of formation shall remain unchanged.

(e) Any amendment or change effected in connection with the restatement and integration of the certificate of limited partnership shall be subject to any other provision of the Nebraska Uniform Limited Partnership Act which would apply if a separate certificate of amendment were filed to effect such amendment or change.

Source: Laws 1989, LB 482, § 22; Laws 1990, LB 1228, § 5.

67-248.02 Merger or consolidation; procedure; effect.

(a)(1) A domestic limited partnership may merge or consolidate with one or more domestic or foreign limited partnerships or other business entities pursuant to an agreement or plan of merger or consolidation adopted in accordance with this section setting forth:

(A) The name of each limited partnership or business entity that is a party to the merger or consolidation;

(B) The name, type of business entity, and jurisdiction of formation of the surviving limited partnership or business entity into which the limited partnership and such other business entities will merge or the name, type of business entity, and jurisdiction of formation of the new business entity resulting from the consolidation of the limited partnership and the other business entities that are party to a plan of consolidation;

(C) The terms and conditions of the merger or consolidation, including the manner and basis of converting the interests of the partners, members, or shareholders, as the case may be, of each limited partnership or business entity that is a party to such merger or consolidation into interests or obligations of the surviving or new limited partnership or business entity resulting therefrom or into money or other property in whole or in part; and

(D) Such other provisions as the merging or consolidating limited partnerships or business entities may desire.

(2) Notwithstanding the provisions of section 67-450, an agreement or plan of merger or consolidation shall be approved (A) by each domestic limited partnership that is a party thereto in accordance with the voting provisions of its partnership agreement or, if not so provided, by each general partner and by limited partners who own in the aggregate more than a fifty percent interest in the profits of such limited partnership owned by all of the limited partners or, if there is more than one class or group of limited partners, then by limited partners of each class or group of limited partners, in either case, who own in the aggregate more than fifty percent of the then current percentage of other interest in the profits of such limited partnership owned by all of the limited partners in each such class or group and (B) by each other business entity that is a party thereto in accordance with the laws under which such business entity was formed and in accordance with the applicable requirements of its organizational documents. Notwithstanding such approval, at any time before the articles of merger or consolidation are filed, an agreement or plan of merger or of consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in such agreement or plan of merger or of consolidation.

(b) As used in this section:

(1) Business entity means a domestic or foreign corporation; a domestic or foreign partnership; a domestic or foreign limited partnership; or a domestic or foreign limited liability company; and

(2) Organizational documents includes:

(A) For a domestic or foreign corporation, its articles of incorporation, bylaws, and other agreements among its shareholders which are authorized by its governing statute or comparable records as provided in its governing statute;

(B) For a domestic or foreign partnership, its partnership agreement;

(C) For a domestic or foreign limited partnership, its certificate of limited partnership and partnership agreement; and

(D) For a domestic or foreign limited liability company, its certificate or articles of organization and operating agreement or comparable records as provided in its governing statute.

(c) After a plan of merger or consolidation with respect to a domestic limited partnership is approved in accordance with this section, the surviving or resulting business entity shall deliver to the Secretary of State for filing articles of merger or consolidation setting forth:

(1) The plan of merger or consolidation;

(2) A statement to the effect that the requisite approval was obtained by the partners, members, or shareholders, as the case may be, of each business entity that is a party to such plan of merger or consolidation; and

(3) If the surviving or resulting business entity of a merger or consolidation is not a domestic business entity, an agreement by the surviving or resulting business entity that it may be served with process within or outside this state in any proceeding in the courts of this state for the enforcement of any obligation of such former domestic limited partnership.

(d) If the surviving or resulting business entity of a merger or consolidation under this section is a domestic corporation, then the merger or consolidation shall become effective and shall have the effects provided in sections 21-2,161 to 21-2,168. If the surviving or resulting business entity of a merger or consolidation under this section is a domestic limited liability company, then the merger or consolidation shall become effective and shall have the effects provided in sections 21-170 to 21-174. If the surviving or resulting business entity of a merger or consolidation under this section is a domestic partnership other than a limited partnership, then the merger or consolidation shall become effective and shall have the effects provided in sections 67-450 to 67-452. If the surviving or resulting business entity of a merger or consolidation is a domestic limited partnership, then:

(1) The merger or consolidation shall take effect on the later of:

(A) The approval of the plan or agreement of merger or consolidation as provided in this section;

(B) The filing of all documents required by law to be filed as a condition to the effectiveness of the merger or consolidation; or

(C) Any effective date specified in the plan or agreement of merger or consolidation;

(2) The several limited partnerships and other business entities which are parties to the plan or agreement of merger or consolidation shall be a single

limited partnership which, in the case of a merger, shall be that limited partnership designated in the merger plan or agreement as the surviving limited partnership and, in the case of a consolidation, shall be the new limited partnership provided for in the consolidation plan or agreement;

(3) The separate existence of all limited partnerships and other business entities which are parties to the plan or agreement of merger or consolidation, except the surviving or new limited partnership, shall cease;

(4) The surviving or new limited partnership shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a limited partnership organized under the Nebraska Uniform Limited Partnership Act;

(5) The surviving or new limited partnership shall possess all the rights, privileges, immunities, and powers, of a public as well as of a private nature, of each of the merging or consolidating limited partnerships and other business entities, subject to the Nebraska Uniform Limited Partnership Act. All property, real, personal, and mixed, all debts due on whatever account, all other things and causes of actions, and all and every other interest belonging to or due to any of the limited partnerships and other business entities, as merged or consolidated, shall be taken and deemed to be transferred to and vested in the surviving or new limited partnership without further act and deed and shall thereafter be the property of the surviving or new limited partnership as they were of any of such merging or consolidating business entities. The title to any real property or any interest in such property vested in any of such merging or consolidating business entities shall not revert or be in any way impaired by reason of such merger or consolidation;

(6) Such surviving or new limited partnership shall be responsible and liable for all the liabilities and obligations of each of the limited partnerships and other business entities so merged or consolidated. Any claim existing or action or proceeding pending by or against any of such limited partnerships or other business entities may be prosecuted as if such merger or consolidation had not taken place or such surviving or new limited partnership may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such limited partnerships or other business entities shall be impaired by such merger or consolidation; and

(7) The equity interests or securities of each limited partnership or other business entity which is a party to the plan or agreement of merger or consolidation that are, under the terms of the merger or consolidation, to be converted or exchanged, shall cease to exist, and the holders of such equity interests or securities shall thereafter be entitled only to the cash, property interests, or securities into which they shall have been converted in accordance with the terms of the plan or agreement of merger or consolidation, subject to any rights under sections 21-2,171 to 21-2,183 or the Nebraska Uniform Limited Liability Company Act or other applicable law.

Source: Laws 1989, LB 482, § 23; Laws 1990, LB 1228, § 6; Laws 1994, LB 884, § 84; Laws 1995, LB 109, § 227; Laws 1997, LB 523, § 69; Laws 2010, LB888, § 101; Laws 2012, LB1018, § 9; Laws 2013, LB283, § 2; Laws 2014, LB749, § 293.

Cross References

Nebraska Uniform Limited Liability Company Act, see section 21-101.

PART III—LIMITED PARTNERS

67-249 Admission of additional limited partners.

(a) In connection with the formation of a limited partnership, a person acquiring a partnership interest as a limited partner is admitted as a limited partner of the limited partnership on the later to occur of:

- (1) The date the original certificate of limited partnership is filed; or
- (2) The time provided in the partnership agreement or, if no such time is provided in the agreement, when the person's admission is reflected in the records of the limited partnership.

(b) After the formation of a limited partnership, a person may be admitted as an additional limited partner:

- (1) In the case of a person acquiring a partnership interest directly from the limited partnership, upon compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners and when the person's admission is reflected in the records of the limited partnership; and
- (2) In the case of an assignee of a partnership interest, as provided in section 67-274.

Source: Laws 1981, LB 272, § 17; Laws 1989, LB 482, § 24.

67-250 Partnership agreement; classes or groups of limited partners; voting rights specified.

(a) A partnership agreement may provide for classes or groups of limited partners having such relative rights, powers, and duties as provided in the partnership agreement and may make provision for the future creation in the manner provided in the partnership agreement of additional classes or groups of limited partners having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes or groups of limited partners. A partnership agreement may provide for the taking of an action, including the amendment of the partnership agreement, without the vote or approval of any limited partner or class or group of limited partners, including an action to create under the provisions of the partnership agreement a class or group of partnership interests that was not previously outstanding.

(b) Subject to section 67-251, the partnership agreement may grant to all or a specified class or group of the limited partners the right to vote on a per capita or other basis separately or with all or any class or group of the limited partners or the general partners upon any matter.

(c) A partnership agreement which grants a right to vote to any class or group of limited partners may set forth provisions relating to notice of the time, place, or purpose of any meeting at which any matter is to be voted on by any limited partners, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

Source: Laws 1981, LB 272, § 18; Laws 1989, LB 482, § 25.

67-251 Limited partner; liability to third parties.

(a) Except as provided in subsection (d) of this section, a limited partner is not liable for the obligations of a limited partnership unless he or she is also a general partner or, in addition to the exercise of his or her rights and powers as a limited partner, he or she participates in the control of the business. However, if the limited partner participates in the control of the business, he or she is liable only to persons who transact business with the limited partnership with actual knowledge of his or her participation in control reasonably believing, based upon the limited partner's conduct, that the limited partner is a general partner. An assignee of a partnership interest who is not admitted as an additional limited partner shall not be liable for the obligations of a limited partnership.

(b) A limited partner does not participate in the control of the business within the meaning of subsection (a) of this section solely by virtue of possessing or exercising one or more of the following powers:

(1) The power to be an independent contractor for or to transact business with the limited partnership, including the power to be a contractor for or an agent or employee of the limited partnership or of a general partner, or to be an officer, director, or equity security holder of a general partner which is a corporation, or to be a contractor for or an agent, employee, or member of a general partner which is a limited liability company, or to be an officer, partner, or equity security holder of a general partner which is a partnership, or to be a fiduciary or beneficiary of an estate or trust which is a general partner, or any combination of these roles, whether solely or jointly with others and irrespective of whether that general partner is the sole general partner of the limited partnership or is a general partner of one or more limited partnerships;

(2) The power to consult with and advise a general partner with respect to any matter concerning the business of the limited partnership;

(3) The power to act as surety, guarantor, or endorser for the limited partnership or a general partner, to guaranty or assume one or more specific obligations of the limited partnership or a general partner, to borrow money from the limited partnership or a general partner, to lend money to the limited partnership or a general partner, or to provide collateral for the limited partnership;

(4) The power to propose, approve, or disapprove by voting, by number, financial interest, class, or group or as otherwise provided in the partnership agreement, or otherwise vote on one or more of the following matters:

(i) The dissolution and winding up of the limited partnership or an election to continue the limited partnership or an election to continue the business of the limited partnership;

(ii) The sale, exchange, lease, mortgage, assignment, pledge, or other transfer of or granting a security interest in any asset or assets of the limited partnership;

(iii) The incurrence, renewal, refinancing, or payment or other discharge of indebtedness by the limited partnership;

(iv) A change in the nature of the business;

(v) The removal, admission, or retention of a general partner;

(vi) The removal, admission, or retention of a limited partner;

(vii) A transaction or other matter involving an actual or potential conflict of interest;

(viii) An amendment to the partnership agreement or certificate of limited partnership;

(ix) The merger or consolidation of a limited partnership;

(x) In respect of a limited partnership which is registered as an investment company under the federal Investment Company Act of 1940, as amended, any matter required by the federal Investment Company Act of 1940, as amended, or the rules and regulations of the Securities and Exchange Commission thereunder, to be approved by the holders of beneficial interests in an investment company, including the electing of directors or trustees of the investment company, the approving or terminating of investment advisory or underwriting contracts, and the approving of auditors;

(xi) The indemnification of any partner or other person; or

(xii) Such other matters as are stated in the partnership agreement or in any other agreement or writing as being subject to the approval or disapproval of limited partners;

(5) The power to call, request, attend, or participate at a meeting of the partners or the limited partners;

(6) The power to wind up a limited partnership pursuant to section 67-278;

(7) The power to take any action required or permitted by law to bring, pursue, settle, or otherwise terminate a derivative action in the right of the limited partnership;

(8) The power to serve on a committee of the limited partnership or the limited partners; or

(9) The power to exercise any right or power granted or permitted to limited partners under the Nebraska Uniform Limited Partnership Act and not specifically enumerated in this subsection.

(c) The enumeration in subsection (b) of this section does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him or her in the control of the business of the limited partnership.

(d) A limited partner who knowingly permits his or her name to be used in the name of the limited partnership, except under circumstances permitted by subdivision (2) of section 67-234, is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

(e) This section shall not create any rights or powers of limited partners. Such rights and powers may be created only by a certificate of limited partnership, a partnership agreement, or any other agreement or writing or by the Nebraska Uniform Limited Partnership Act.

Source: Laws 1981, LB 272, § 19; Laws 1982, LB 589, § 3; Laws 1989, LB 482, § 26; Laws 1993, LB 121, § 403; Laws 1994, LB 884, § 85.

67-252 Persons erroneously believing themselves limited partners; liability.

(a) Except as provided in subsection (b) of this section, a person who makes a contribution to a business enterprise and erroneously but in good faith believes

that he or she has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner if within a reasonable time, not less than thirty days, after ascertaining the mistake he or she:

(1) Causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed; or

(2) Takes the necessary action to withdraw from the enterprise.

(b) A person who makes a contribution of the kind described in subsection (a) of this section is liable as a general partner to any third party who transacts business with the enterprise prior to the occurrence of either of the events referred to in such subsection if (1) such person knew or should have known either that no certificate has been filed or that the certificate inaccurately refers to him or her as a general partner and (2) the third party actually believed in good faith that such person was a general partner at the time of the transaction, acted in reasonable reliance on such belief, and extended credit to the enterprise in reasonable reliance on the credit of such person.

Source: Laws 1981, LB 272, § 20; Laws 1989, LB 482, § 27.

67-253 Limited partner; rights; general partner; rights; records.

(a) Each limited partner has the right, subject to such reasonable conditions, including conditions governing what information and documents are to be furnished, at what time and location, and at whose expense, as may be set forth in the limited partnership agreement or otherwise established by the general partners, to obtain from the general partners from time to time upon reasonable demand for any purpose reasonably related to the limited partner's interest as a limited partner (1) true and full information regarding the status of the business and financial condition of the limited partnership, (2) promptly after becoming available, a copy of the limited partnership's federal, state, and local income tax returns for each year, (3) a current list of the full name and last-known business, residence, or mailing address of each partner, (4) a copy of the partnership agreement and certificate of limited partnership and all certificates of amendment thereto and executed copies of any powers of attorney pursuant to which the partnership agreement and any certificate and all amendments thereto have been executed to the extent such powers of attorney are in the possession of one or more of the general partners, (5) true and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each partner and which each partner has agreed to contribute in the future and the date on which each became a partner, and (6) other information regarding the affairs of the limited partnership as is just and reasonable.

(b) A general partner shall have the right to keep confidential from limited partners for such period of time as the general partner deems reasonable any information which the general partner reasonably believes to be in the nature of trade secrets or other information the disclosure of which the general partner in good faith believes is not in the best interest of the limited partnership or could damage the limited partnership or its business or which the limited partnership is required by law or by agreement with a third party to keep confidential.

(c) A limited partnership may maintain its records in other than a written form if such form is capable of conversion into written form within a reasonable time.

(d) Any demand under this section shall be in writing and shall state the purpose of such demand.

Source: Laws 1981, LB 272, § 21; Laws 1982, LB 589, § 4; Laws 1989, LB 482, § 28.

PART IV—GENERAL PARTNERS

67-254 Admission of additional general partners.

After the filing of a limited partnership's original certificate of limited partnership, additional general partners may be admitted as provided in the partnership agreement or, if the partnership agreement does not provide for the admission of additional general partners, with the written consent of all partners.

Source: Laws 1981, LB 272, § 22; Laws 1982, LB 589, § 5; Laws 1989, LB 482, § 29.

67-255 General partner; status; termination; when.

Except as approved by the written consent of all partners at the time, a person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

(1) The general partner withdraws from the limited partnership as provided in section 67-264;

(2) The general partner ceases to be a general partner of the limited partnership as provided in section 67-272;

(3) The general partner is removed as a general partner in accordance with the partnership agreement;

(4) Unless otherwise provided in the partnership agreement, the general partner: (i) Makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is adjudicated a bankrupt or insolvent or has an order for relief in any bankruptcy or insolvency proceeding entered against the general partner; (iv) files a petition or answer seeking for the general partner any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, rule, or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the general partner in any proceeding of this nature; or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of the general partner's properties;

(5) Unless otherwise provided in the partnership agreement, one hundred twenty days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, rule, or regulation, the proceeding has not been dismissed, or if within ninety days after the appointment without the general partner's consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of the general partner's properties, the appointment is not vacated or stayed or,

within ninety days after the expiration of any such stay, the appointment is not vacated;

(6) In the case of a general partner who is a natural person:

(i) His or her death; or

(ii) The entry of an order by a court of competent jurisdiction adjudicating him or her incompetent to manage his or her person or his or her estate;

(7) In the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee;

(8) In the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;

(9) In the case of a general partner that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter and the expiration of ninety days after the date of notice to the corporation of revocation without a reinstatement of its charter;

(10) In the case of a general partner that is a limited liability company, the filing of the articles of dissolution, or its equivalent, for the limited liability company or the forfeiture of its certificate and the expiration of one year after notice of forfeiture without revival and reinstatement; or

(11) In the case of a general partner that is an estate, the distribution by the fiduciary of the estate's entire interest in the partnership.

Source: Laws 1981, LB 272, § 23; Laws 1989, LB 482, § 30; Laws 1993, LB 121, § 404.

67-256 General partners; powers and liabilities.

(a) Except as otherwise provided in the Nebraska Uniform Limited Partnership Act or in the partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions of a partner in a partnership without limited partners.

(b) Except as otherwise provided in the Nebraska Uniform Limited Partnership Act, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners. Except as otherwise provided in the act or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners.

Source: Laws 1981, LB 272, § 24; Laws 1989, LB 482, § 31.

67-257 Contributions by a general partner; powers and liabilities.

A general partner of a limited partnership may make contributions to the partnership and share in the profits and losses of, and in distributions from, the limited partnership as a general partner. A general partner also may make contributions to and share in profits, losses, and distributions as a limited partner. A person who is both a general partner and a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a general partner and, except as provided in the partnership agreement, also has the

rights and powers, and is subject to the restrictions, of a limited partner to the extent of his or her participation in the partnership as a limited partner.

Source: Laws 1981, LB 272, § 25; Laws 1989, LB 482, § 32.

67-258 Partnership agreement; classes or groups of general partners; voting rights specified.

(a) A partnership agreement may provide for classes or groups of general partners having such relative rights, powers, and duties as provided in the partnership agreement and may make provision for the future creation in the manner provided in the partnership agreement of additional classes or groups of general partners having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes or groups of general partners. A partnership agreement may provide for the taking of an action, including the amendment of the partnership agreement, without the vote or approval of any general partner or class or group of general partners, including an action to create under the provisions of the partnership agreement a class or group of partnership interests that was not previously outstanding.

(b) The partnership agreement may grant to all or certain identified general partners or a specified class or group of the general partners the right to vote, on a per capita or any other basis, separately or with all or any class or group of the limited partners or the general partners, on any matter.

(c) A partnership agreement which grants a right to vote to any class or group of general partners may set forth provisions relating to notice of the time, place, or purpose of any meeting at which any matter is to be voted on by any general partners, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

Source: Laws 1981, LB 272, § 26; Laws 1989, LB 482, § 33.

PART V—FINANCE

67-259 Form of contribution.

The contribution of a partner may be in cash, property, or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

Source: Laws 1981, LB 272, § 27.

67-260 Liability for contributions.

(a) Except as provided in the partnership agreement, a partner is obligated to the limited partnership to perform any promise to contribute cash or property or to perform services even if he or she is unable to perform because of death, disability, or any other reason. If a partner does not make the required contribution of property or services, he or she is obligated at the option of the limited partnership to contribute cash equal to that portion of the agreed value, as stated in the records of the limited partnership, of the contribution that has not been made. Such option shall be in addition to and not in lieu of any other rights, including the right to specific performance, that the limited partnership

may have against such partner under the partnership agreement or applicable law.

(b) Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of the Nebraska Uniform Limited Partnership Act may be compromised only by consent of all the partners. Notwithstanding the compromise, a creditor of a limited partnership who extends credit, or whose claim arises, after the entering into of the partnership agreement or an amendment thereto which, in either case, reflects the obligation, and before the amendment or cancellation thereof to reflect the compromise, may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of the act.

(c) A partnership agreement may provide that the interest of any partner who fails to make any contribution that he or she is obligated to make shall be subject to specified penalties for or specified consequences of such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting partner's proportionate interest in the limited partnership, subordinating his or her partnership interest to that of nondefaulting partners, a forced sale of his or her partnership interest, forfeiture of his or her partnership interest, the lending by other partners of the amount necessary to meet his or her commitment, a fixing of the value of his or her partnership interest by appraisal or by formula and redemption or sale of his or her partnership interest at such value, or any other penalty or consequence.

(d) A promise by a limited partner to contribute to the limited partnership is not enforceable unless set out in a writing signed by the limited partner. A conditional obligation of a partner to make a contribution or return money or other property to a limited partnership may not be enforced unless the conditions to the obligation have been satisfied or waived as to or by such partner. Conditional obligations include contributions payable upon a discretionary call of a limited partnership or a general partner prior to the time the call occurs.

Source: Laws 1981, LB 272, § 28; Laws 1989, LB 482, § 34.

67-261 Profits and losses; allocation.

The profits and losses of a limited partnership shall be allocated among the partners, and among classes or groups of partners, in the manner provided in the partnership agreement. If the partnership agreement does not so provide, profits and losses shall be allocated on the basis of the agreed value, as stated in the records of the limited partnership, of the contributions made by each partner to the extent they have been received by the limited partnership and have not been returned.

Source: Laws 1981, LB 272, § 29; Laws 1989, LB 482, § 35.

67-262 Distributions of assets.

Distributions of cash or other assets of a limited partnership shall be allocated among the partners, and among classes or groups of partners, in the manner provided in the partnership agreement. If the partnership agreement does not so provide, distributions shall be made on the basis of the agreed value, as stated in the records of the limited partnership, of the contributions

made by each partner to the extent they have been received by the limited partnership and have not been returned.

Source: Laws 1981, LB 272, § 30; Laws 1989, LB 482, § 36.

PART VI—DISTRIBUTIONS AND WITHDRAWAL

67-263 Distributions before withdrawal and dissolution.

Except as otherwise provided in sections 67-263 to 67-270, a partner is entitled to receive distributions from a limited partnership before his or her withdrawal from the limited partnership and before the dissolution and winding up thereof to the extent and at the times or upon the happening of the events specified in the partnership agreement.

Source: Laws 1981, LB 272, § 31; Laws 1989, LB 482, § 37.

67-264 Withdrawal of general partner.

A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement, including to the extent stated in the partnership agreement a forfeiture of the withdrawing general partner's partnership interest, and may offset the damages against the amount otherwise distributable to him or her in addition to any remedies available under applicable law.

Source: Laws 1981, LB 272, § 32; Laws 1989, LB 482, § 38.

67-265 Withdrawal of limited partner.

A limited partner may withdraw from a limited partnership at the time or upon the happening of events specified in the partnership agreement and in accordance with the partnership agreement. A partnership agreement may provide that a limited partner may not withdraw from a limited partnership or assign a partnership interest in a limited partnership prior to the dissolution and winding up of the limited partnership. If the partnership agreement does not specify the time or the events upon the happening of which a limited partner may or may not withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than six months' prior written notice to each general partner at his or her address as set forth in the certificate of limited partnership filed in the office of the Secretary of State.

Source: Laws 1981, LB 272, § 33; Laws 1989, LB 482, § 39.

67-266 Distribution upon withdrawal.

Except as provided in sections 67-263 to 67-270, upon withdrawal any withdrawing partner is entitled to receive any distribution to which he or she is entitled under the partnership agreement and, if not otherwise provided in the agreement, he or she is entitled to receive, within a reasonable time after withdrawal, the fair value of his or her interest in the limited partnership as of the date of withdrawal based upon his or her right to share in distributions from the limited partnership.

Source: Laws 1981, LB 272, § 34.

67-267 Distribution in kind; limitation.

Except as provided in the partnership agreement, a partner, regardless of the nature of his or her contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash. Except as provided in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to him or her exceeds a percentage of that asset which is equal to the percentage in which he or she shares in distributions from the limited partnership.

Source: Laws 1981, LB 272, § 35; Laws 1989, LB 482, § 40.

67-268 Right to distribution; remedies; record date.

At the time a partner becomes entitled to receive a distribution, he or she has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution. A partnership agreement may provide for the establishment of a record date with respect to allocations and distributions by a limited partnership.

Source: Laws 1981, LB 272, § 36; Laws 1989, LB 482, § 41.

67-269 Limitations on distributions.

A limited partnership shall not make a distribution to a partner to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests and liabilities for which the recourse of creditors is limited to specific property of the limited partnership, exceed the fair value of the partnership assets, except that the fair value of property that is subject to a liability for which recourse of creditors is limited shall be included in the assets of the limited partnership only to the extent that the fair value of that property exceeds that liability.

Source: Laws 1981, LB 272, § 37; Laws 1989, LB 482, § 42.

67-270 Unlawful distribution; liability.

(a) A limited partner who receives a distribution in violation of section 67-269 and who knew at the time of the distribution that the distribution violated such section shall be liable to the limited partnership for the amount of the distribution. A limited partner who receives a distribution in violation of such section and who did not know at the time of the distribution that the distribution violated such section shall not be liable for the amount of the distribution. Subject to subsection (b) of this section, this subsection shall not affect any obligation or liability of a limited partner under a partnership agreement or other applicable law for the amount of a distribution.

(b) Unless otherwise agreed, a limited partner who receives a distribution from a limited partnership shall have no liability under the Nebraska Uniform Limited Partnership Act or other applicable law for the amount of the distribution after the expiration of three years from the date of the distribution.

Source: Laws 1981, LB 272, § 38; Laws 1989, LB 482, § 43.

PART VII—ASSIGNMENT OF PARTNERSHIP INTERESTS

67-271 Partnership interest; personal property; interest in property.

A partnership interest is personal property. A partner has no interest in specific limited partnership property.

Source: Laws 1981, LB 272, § 39; Laws 1989, LB 482, § 44.

67-272 Assignment of partnership interest.

(a) Except as provided in the partnership agreement: (1) A partnership interest is assignable in whole or in part; (2) an assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights or powers of a partner; (3) an assignment entitles the assignee to share in such profits and losses and to receive such distribution or distributions and such allocation of income, gain, loss, deduction, credit, or similar item to which the assignor would be entitled to the extent assigned; and (4) a partner ceases to be a partner and to have the power to exercise any rights or powers of a partner upon assignment of all his or her partnership interest and the admission of the assignee to the partnership in accordance with section 67-274.

(b) The partnership agreement may provide that a partner's interest in a limited partnership may be evidenced by a certificate of partnership interest issued by the limited partnership and may also provide for the assignment or transfer of any partnership interest represented by such a certificate and make other provisions with respect to such certificates.

(c) Unless otherwise provided in a partnership agreement and except to the extent assumed by agreement, until an assignee of a partnership interest becomes a partner, the assignee shall have no liability as a partner solely as a result of the assignment.

Source: Laws 1981, LB 272, § 40; Laws 1989, LB 482, § 45.

67-273 Rights of judgment creditor of a partner.

On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. The Nebraska Uniform Limited Partnership Act does not deprive any partner of the benefit of any exemption laws applicable to his or her partnership interest.

Source: Laws 1981, LB 272, § 41; Laws 1989, LB 482, § 46.

67-274 Assignee becoming limited partner; rights and liabilities.

(a) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that (1) the partnership agreement so provides or (2) all other partners consent. An assignee of a partnership interest becomes a limited partner at the time provided in and upon compliance with the partnership agreement or, if the partnership agreement does not so provide, when all other partners consent to such person's admission as a limited partner and such person's admission as a limited partner is reflected in the records of the limited partnership.

(b) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and the Nebraska Uniform

Limited Partnership Act. An assignee who becomes a limited partner also is liable for the obligations of his or her assignor to make contributions as provided in section 67-260 but is not liable for the obligations of his or her assignor under section 67-270. However, the assignee is not obligated for liabilities unknown to the assignee at the time he or she became a limited partner and which could not be ascertained from the partnership agreement.

(c) Whether or not an assignee of a partnership interest becomes a limited partner, the assignor is not released from his or her liability to the limited partnership under section 67-260 unless otherwise provided in the partnership agreement.

Source: Laws 1981, LB 272, § 42; Laws 1989, LB 482, § 47.

67-275 Partner's executor or legal representative; exercise of powers.

If a partner who is an individual dies or a court of competent jurisdiction adjudges him or her to be incompetent to manage his or her person or his or her property, the partner's executor, administrator, guardian, conservator, personal representative, or other legal representative may exercise all the partner's rights for the purpose of settling his or her estate or administering his or her property, including any power the partner had to give an assignee the right to become a limited partner. If a partner is a corporation, limited liability company, trust, or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor.

Source: Laws 1981, LB 272, § 43; Laws 1993, LB 121, § 405.

PART VIII—DISSOLUTION

67-276 Dissolution; when.

A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

- (1) At the time or upon the happening of events specified in the partnership agreement;
- (2) Written consent to dissolution of all partners;
- (3) An event of withdrawal of a general partner unless at the time there is at least one other general partner and the partnership agreement permits the business of the limited partnership to be carried on by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal if (i) all partners have previously consented in the partnership agreement or otherwise to have a specific person designated as a general partner or (ii) within one hundred eighty days after the withdrawal, all partners other than the withdrawn general partner agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or desired; or
- (4) Entry of a decree of judicial dissolution under section 67-277.

Source: Laws 1981, LB 272, § 44; Laws 1989, LB 482, § 48.

67-277 Judicial dissolution.

On application by or for a partner the district court may decree dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement.

Source: Laws 1981, LB 272, § 45.

67-278 Dissolution; right to wind up partnership affairs; powers.

(a) Except as provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the limited partners or a person approved by the limited partners or, if there is more than one class or group of limited partners, then by each class or group of limited partners, but in either case, by limited partners who own more than fifty percent of the then current percentage or other interest in the profits of the limited partnership owned by all of the limited partners or by the limited partners in each class or group as appropriate, may wind up the limited partnership's affairs; but the district court may wind up the limited partnership's affairs upon application of any partner or his or her legal representative or assignee and in connection with winding up such affairs may appoint a liquidating trustee.

(b) Upon dissolution of a limited partnership and until the filing of a certificate of cancellation as provided in section 67-242, the persons winding up the limited partnership's affairs may, in the name of and for and on behalf of the limited partnership, prosecute and defend suits, whether civil, criminal, or administrative, gradually settle and close the limited partnership's business, dispose of and convey the limited partnership's property, discharge the limited partnership's liabilities, and distribute to the partners any remaining assets of the limited partnership, all without affecting the liability of the limited partners.

Source: Laws 1981, LB 272, § 46; Laws 1989, LB 482, § 49.

67-279 Dissolution; distribution of assets.

(a) Upon the winding up of a limited partnership, the assets shall be distributed as follows:

(1) To creditors, including partners who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited partnership, whether by payment or by the making of reasonable provision for payment thereof, other than liabilities for distributions to partners under section 67-263 or 67-266;

(2) Except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under section 67-263 or 67-266; and

(3) Except as provided in the partnership agreement, to partners first for the return of their contributions and secondly respecting their partnership interest, in the proportions in which the partners share in distributions.

(b) A limited partnership which has dissolved shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional, or unmatured claims and obligations, known to the limited partnership and all claims and obligations which are known to the limited partnership but for which the identity of the claimant is unknown. If there are sufficient assets, such claims and obligations shall be paid in full and any such provision for payment made shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and,

among claims and obligations of equal priority, ratably to the extent of assets available therefor. Unless otherwise provided in a partnership agreement, any remaining assets shall be distributed as provided in the Nebraska Uniform Limited Partnership Act. Any liquidating trustee winding up a limited partnership's affairs who has complied with this section shall not be personally liable to the claimants of the dissolved limited partnership by reason of such person's actions in winding up the limited partnership.

Source: Laws 1981, LB 272, § 47; Laws 1989, LB 482, § 50.

PART IX—FOREIGN LIMITED PARTNERSHIPS

67-280 Foreign limited partnership; law governing.

Subject to the Constitution of Nebraska, (1) the laws of the state or foreign country under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners and (2) a foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this state.

Source: Laws 1981, LB 272, § 48; Laws 1989, LB 482, § 51.

67-281 Foreign limited partnership; registration; contents.

(a) Before transacting business in this state, a foreign limited partnership shall register with the Secretary of State. In order to register, a foreign limited partnership shall submit to the Secretary of State, in duplicate, an application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

(1) The name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in this state;

(2) The state or country and date of its formation;

(3) A statement that the Secretary of State is appointed the agent of the foreign limited partnership for service of process if no agent has been appointed under subdivision (4) of this subsection, if an agent has been appointed but the agent's authority has been revoked, or if an agent has been appointed but cannot be found or served with the exercise of reasonable diligence;

(4) The name and street address and post office box number, if any, of any agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint. The agent must be an individual resident of this state, a domestic corporation, a foreign corporation having a place of business in and authorized to do business in this state, a domestic limited liability company, or a foreign limited liability company having a place of business in and authorized to do business in this state;

(5) The address of the office required to be maintained in the state or country of its organization by the laws of that state or country or, if not so required, of the principal office of the foreign limited partnership; and

(6) The name and business, residence, or mailing address of each of the general partners.

(b) A foreign limited partnership or a partnership, limited liability company, or corporation formed or organized under the laws of any foreign country or other foreign jurisdiction or the laws of any state other than this state shall not

be deemed to be doing business in this state solely by reason of its being a partner in a domestic limited partnership.

Source: Laws 1981, LB 272, § 49; Laws 1983, LB 447, § 80; Laws 1989, LB 482, § 52; Laws 1993, LB 121, § 406; Laws 2008, LB383, § 4.

67-282 Issuance of registration.

(a) If the Secretary of State finds that an application for registration conforms to law and all requisite fees have been paid, he or she shall:

- (1) Endorse on the application the word Filed, and the month, day, and year of the filing thereof;
- (2) File in his or her office a duplicate original of the application; and
- (3) Issue a certificate of registration to transact business in this state.

(b) The certificate of registration, together with a duplicate original of the application, shall be returned to the person who filed the application or his or her representative.

Source: Laws 1981, LB 272, § 50.

67-283 Foreign limited partnership; name; agent.

(a) A foreign limited partnership may register with the Secretary of State under any name, whether or not it is the name under which it is registered in its state or country of organization, that includes the words limited partnership or limited or the abbreviations L.P. or Ltd. and that could be registered by a domestic limited partnership. A foreign limited partnership may register under any name which is deceptively similar to, upon the records in the office of the Secretary of State, the name of any domestic or foreign corporation, limited liability company, or limited partnership reserved, registered, or organized under the laws of this state with the consent of the other corporation, limited liability company, or limited partnership or with the transfer of such name by the other corporation, limited liability company, or limited partnership, which written consent or transfer shall be filed with the Secretary of State.

(b) Each foreign limited partnership shall have and maintain in this state an agent for service of process on the limited partnership, which agent may be either an individual resident of this state, a domestic corporation, a foreign corporation authorized to do business in this state, a domestic limited liability company, or a foreign limited liability company authorized to do business in this state. The appointment of the Secretary of State as agent for service of process pursuant to subdivision (a)(3) of section 67-281 shall not relieve a foreign limited partnership from its obligations pursuant to this section or from the consequences of failure to discharge its obligations under this section.

(c) An agent may change his, her, or its street address and post office box number, if any, for service of process to another street address and post office box number, if any, in this state by paying a fee as set forth in section 67-293 and filing with the Secretary of State a certificate, executed by the agent, setting forth the names of the foreign limited partnerships represented by the agent, the street address and post office box number, if any, at which such agent has maintained his, her, or its office as agent for each of such foreign limited partnerships, and the new street address and post office box number, if any, to which his, her, or its office will be changed on a given day, at which new street address and post office box number, if any, the agent will thereafter

maintain his, her, or its office as agent for each of the foreign limited partnerships recited in the certificate. Upon the filing of the certificate, the Secretary of State shall furnish to the agent a copy of the same, and thereafter or until further change of street address or post office box number, if any, as authorized by law, the office of the agent in this state for each of the foreign limited partnerships recited in the certificate shall be located at the new street address and post office box number, if any. Filing of the certificate shall be deemed to be an amendment of the registration of each foreign limited partnership affected thereby, and each such foreign limited partnership shall not be required to take any further action to amend its registration. Any agent filing a certificate under this section shall promptly, upon filing, deliver a copy of such certificate to each foreign limited partnership affected thereby.

(d) The agent of one or more foreign limited partnerships may resign and appoint a successor agent by paying a fee as set forth in section 67-293 and filing a certificate with the Secretary of State, stating that the agent is resigning and the name and street address and post office box number, if any, of the successor agent. There shall be attached to such certificate a statement executed by each affected foreign limited partnership ratifying and approving such change of agent. Upon such filing, the successor agent shall become the agent of such foreign limited partnerships as have ratified and approved such substitution. The Secretary of State shall furnish to the successor agent a copy of the certificate of resignation. Filing of the certificate of resignation shall be deemed to be an amendment of the registration of each foreign limited partnership affected thereby, and each such foreign limited partnership shall not be required to take any further action to amend its registration.

(e) The agent of one or more foreign limited partnerships may resign without appointing a successor agent by paying a fee as set forth in section 67-293 and filing a certificate with the Secretary of State stating that the agent is resigning as agent for the foreign limited partnerships identified in the certificate, but such resignation shall not become effective until one hundred twenty days after the certificate is filed. There shall be attached to such certificate an affidavit of such agent, if an individual, or of the president, a vice president, or the secretary, if a corporation, or of the manager or a member, if a limited liability company, that, at least thirty days prior to the date of filing of the certificate, notice of the resignation of such agent was sent, by certified or registered mail, to each foreign limited partnership for which such agent is resigning as agent, at the principal office thereof within or outside this state if known to such agent or, if not, to the last-known address of the attorney or other individual at whose request such agent was appointed for such foreign limited partnership. After receipt of the notice of the resignation of its agent, the foreign limited partnership for which such agent was acting shall obtain and designate a new agent to take the place of the agent so resigning. If such foreign limited partnership fails to obtain and designate a new agent prior to the expiration of the period of one hundred twenty days after the filing of the certificate of resignation, such foreign limited partnership shall not be permitted to do business in this state and its registration shall be deemed to be canceled.

Source: Laws 1981, LB 272, § 51; Laws 1989, LB 482, § 53; Laws 1990, LB 1228, § 7; Laws 1993, LB 121, § 407; Laws 2003, LB 464, § 8; Laws 2008, LB383, § 5.

67-284 Application for registration; amendments.

If any statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described have changed making the application false in any respect, the foreign limited partnership shall promptly file in the office of the Secretary of State a certificate, signed and sworn to by a general partner, correcting such statement.

Source: Laws 1981, LB 272, § 52; Laws 1989, LB 482, § 54.

67-285 Cancellation of registration; effect.

A foreign limited partnership may cancel its registration by filing with the Secretary of State a certificate of cancellation signed and sworn to by a general partner together with a fee as set forth in section 67-293. A cancellation does not terminate the authority of the Secretary of State to accept service of process for the foreign limited partnership with respect to causes of action arising out of the transaction of business in this state.

Source: Laws 1981, LB 272, § 53; Laws 1983, LB 447, § 81; Laws 1989, LB 482, § 55.

67-286 Transaction of business without registration; effect.

(a) A foreign limited partnership transacting business in this state may not maintain any action, suit, or proceeding in any court of this state until it has registered in this state.

(b) The failure of a foreign limited partnership to register in this state does not impair the validity of any contract or act of the foreign limited partnership or the right of any other party to the contract to maintain any action, suit, or proceeding on the contract or prevent the foreign limited partnership from defending any action, suit, or proceeding in any court of this state.

(c) A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of having transacted business in this state without registration.

(d) Transaction of business in this state without registration by a foreign limited partnership shall constitute sufficient contact with this state for the exercise of personal jurisdiction over the partnership in any action arising out of its activity in this state.

Source: Laws 1981, LB 272, § 54; Laws 1983, LB 447, § 82; Laws 1989, LB 482, § 56.

67-286.01 Foreign limited partnerships; sections applicable.

Sections 67-243 and 67-246 shall be applicable to foreign limited partnerships as if they were domestic limited partnerships.

Source: Laws 1989, LB 482, § 57.

67-287 Action by Attorney General.

The Attorney General may bring an action to restrain a foreign limited partnership from transacting business in this state in violation of sections 67-280 to 67-286.

Source: Laws 1981, LB 272, § 55.

PART X—DERIVATIVE ACTIONS

67-288 Limited partner; assignee; right of action.

A limited partner or an assignee of a limited partner may bring an action in the name of a limited partnership to recover a judgment in its favor if general partners with authority to do so have refused to bring the action or if an effort to cause those general partners to bring the action is not likely to succeed.

Source: Laws 1981, LB 272, § 56; Laws 1989, LB 482, § 58.

67-289 Derivative action; proper plaintiff.

In a derivative action, the plaintiff must be a partner or an assignee of a partner at the time of bringing the action and (1) must have been a partner at the time of the transaction of which he or she complains, (2) his or her status as a partner must have devolved upon him or her by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction, or (3) his or her status as an assignee of a partner must have devolved upon him or her pursuant to the terms of the assignment from a person who was a partner or an assignee of a partner at the time of the transaction.

Source: Laws 1981, LB 272, § 57; Laws 1989, LB 482, § 59.

67-290 Derivative action; complaint; requirements.

In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by a general partner or the reasons for not making the effort.

Source: Laws 1981, LB 272, § 58.

67-291 Derivative action; expenses; attorney's fees.

If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct him or her to remit to the limited partnership the remainder of those proceeds received by him or her.

Source: Laws 1981, LB 272, § 59.

Under this section, the court may award expenses, including attorney fees, as a separate component of the judgment. This section then requires that in a derivative action, the plaintiff may retain the portion of the judgment awarded as expenses, but any additional proceeds of the judgment that the plaintiff receives must be remitted to the partnership. *Fitzgerald v. Community Redevelopment Corp.*, 283 Neb. 428, 811 N.W.2d 178 (2012).

PART XI—MISCELLANEOUS

67-292 Repealed. Laws 1989, LB 482, § 65.**67-293 Filing fees; disposition.**

The filing fee for all filings pursuant to the Nebraska Uniform Limited Partnership Act, including amendments and name reservation, shall be ten dollars plus the recording fees set forth in subdivision (4) of section 33-101, except that the filing fee for filing a certificate of limited partnership pursuant to section 67-240 and for filing an application for registration as a foreign limited partnership pursuant to section 67-281 shall be two hundred dollars

plus such recording fees. A fee of one dollar per page shall be paid for a certified copy of any document on file pursuant to the act. The fees for filings pursuant to the act shall be paid to the Secretary of State and by him or her remitted to the State Treasurer. The State Treasurer shall credit fifty percent of such fees to the General Fund and fifty percent of such fees to the Corporation Cash Fund.

Source: Laws 1981, LB 272, § 61; Laws 1983, LB 617, § 12; Laws 1989, LB 482, § 60; Laws 1990, LB 1228, § 8; Laws 1994, LB 1004, § 6; Laws 1994, LB 1066, § 59; Laws 2003, LB 357, § 10.

67-294 Uniform Partnership Act of 1998; applicability.

In any case not provided for in the Nebraska Uniform Limited Partnership Act, the Uniform Partnership Act of 1998 shall govern.

Source: Laws 1981, LB 272, § 62; Laws 1989, LB 482, § 61; Laws 1997, LB 523, § 70; Laws 2008, LB707, § 1.

Cross References

Uniform Partnership Act of 1998, see section 67-401.

67-295 Act, how construed.

The Nebraska Uniform Limited Partnership Act shall be so applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the act among states enacting it.

Source: Laws 1981, LB 272, § 63; Laws 1989, LB 482, § 62.

67-296 Act, how cited.

Sections 67-233 to 67-2,100 shall be known and may be cited as the Nebraska Uniform Limited Partnership Act.

Source: Laws 1981, LB 272, § 64; Laws 1989, LB 482, § 63; Laws 2012, LB1018, § 14.

PART XII—CONVERSION

67-297 Conversion; plan.

(a) A domestic limited partnership may convert into a domestic partnership pursuant to sections 67-446 to 67-453. A domestic limited partnership may convert into a domestic limited liability company pursuant to sections 21-170 to 21-184 and may convert into a foreign limited liability company in accordance with this section and the applicable law of the state of formation of such foreign limited liability company. In each case, the conversion of a domestic limited partnership into such other type of entity shall be made pursuant to a plan of conversion setting forth the information required in subdivision (b)(1) of this section and such information required pursuant to the statute under which such conversion shall be effected. Unless otherwise provided in its organizational documents, a plan of conversion shall be approved by the domestic limited partnership by each general partner and by the limited partners who own in the aggregate more than a fifty percent interest in the profits of such limited partnership owned by all of the limited partners or, if there is more than one class or group of limited partners, then by limited partners of each class or group of limited partners, in either case, who own in the aggregate

more than fifty percent of the then current percentage of other interest in the profits of such limited partnership owned by all of the limited partners in each such class or group. Notwithstanding such approval, at any time before the articles of conversion are filed, a plan of conversion may be terminated or amended pursuant to a provision for such termination or amendment contained in the plan of conversion.

(b)(1) A plan of conversion shall be in a record and shall include all of the following:

- (A) The name of the domestic limited partnership before conversion;
- (B) The name and form of the converted entity after conversion;
- (C) The terms and conditions of the conversion, including the manner and basis for converting the interests of the limited partnership into any combination of obligations, interests, or rights in the converted organization or other consideration; and
- (D) The organizational documents of the converted business entity.

(2) For purposes of this section, record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Source: Laws 2012, LB1018, § 10.

67-298 Conversion; articles of conversion.

(a) After a plan of conversion is approved, a domestic limited partnership that is being converted shall deliver to the Secretary of State for filing articles of conversion which shall include all of the following:

- (1) A statement that the domestic limited partnership has been converted into another entity;
- (2) The name and form of the other entity and the jurisdiction of its governing statute;
- (3) The date the conversion is effective under the governing statute of the converted entity;
- (4) A statement that the conversion was approved as required by sections 67-446 to 67-453;
- (5) A statement that the conversion was approved as required by the governing statute of the converted entity; and
- (6) A domestic limited partnership converting into a foreign limited liability company shall deliver to the office of the Secretary of State for filing (A) a certificate which sets forth all of the information required to be in the certificate or other instrument of conversion filed pursuant to the laws under which the resulting foreign limited liability company is formed and (B) an agreement that the resulting foreign limited liability company may be served with process within or outside this state in any proceeding in the courts of this state for the enforcement of any obligation of the former domestic corporation.

(b) The conversion shall become effective as provided by the Nebraska Uniform Limited Liability Company Act, the Uniform Partnership Act of 1998, or the governing statute of the foreign limited liability company.

Source: Laws 2012, LB1018, § 11; Laws 2013, LB283, § 3.

Cross References

Nebraska Uniform Limited Liability Company Act, see section 21-101.
 Uniform Partnership Act of 1998, see section 67-401.

67-299 Effect of conversion.

(a) A domestic limited partnership that has been converted pursuant to the Nebraska Uniform Limited Partnership Act is for all purposes the same domestic limited partnership that existed before the conversion.

(b) When a conversion takes effect, all of the following apply:

(1) All property owned by the converting entity remains vested in the converted entity. The converting entity shall file a certificate of conversion in the office of the register of deeds for each county in which the converting entity owns real property. Such certificate of conversion shall be indexed against the real property owned;

(2) All debts, liabilities, and other obligations of the converting entity continue as obligations of the converted entity;

(3) An action or proceeding pending by or against the converting entity may be continued as if the conversion had not occurred;

(4) The shares or interests of the converting entity are reclassified into shares, interests, other securities, obligations, rights to acquire shares, interests, or other securities, or into cash or other property in accordance with the plan of conversion and the partners, limited partners, or interest holders of the converting entity are entitled only to the rights provided to them under the terms of the conversion and to any appraisal rights they may have under the organic law of the converting entity; and

(5) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting entity remain vested in the converted entity and, except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect.

(c) A converted entity that is a foreign limited liability company consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting corporation if, before the conversion, the converting corporation was subject to suit in this state on the obligation.

Source: Laws 2012, LB1018, § 12.

67-2,100 Existing conversion; effect.

Any conversion of a limited partnership to a limited liability company filed with the Secretary of State's office and existing on or before July 19, 2012, shall continue to be valid.

Source: Laws 2012, LB1018, § 13.

ARTICLE 3**UNIFORM PARTNERSHIP ACT**

Section	
67-301.	Repealed. Laws 2008, LB 707, § 5.
67-302.	Repealed. Laws 2008, LB 707, § 5.
67-303.	Repealed. Laws 2008, LB 707, § 5.
67-304.	Repealed. Laws 2008, LB 707, § 5.
67-305.	Repealed. Laws 2008, LB 707, § 5.
67-306.	Repealed. Laws 2008, LB 707, § 5.

Section	
67-307.	Repealed. Laws 2008, LB 707, § 5.
67-308.	Repealed. Laws 2008, LB 707, § 5.
67-309.	Repealed. Laws 2008, LB 707, § 5.
67-310.	Repealed. Laws 2008, LB 707, § 5.
67-311.	Repealed. Laws 2008, LB 707, § 5.
67-312.	Repealed. Laws 2008, LB 707, § 5.
67-313.	Repealed. Laws 2008, LB 707, § 5.
67-314.	Repealed. Laws 2008, LB 707, § 5.
67-315.	Repealed. Laws 2008, LB 707, § 5.
67-316.	Repealed. Laws 2008, LB 707, § 5.
67-317.	Repealed. Laws 2008, LB 707, § 5.
67-318.	Repealed. Laws 2008, LB 707, § 5.
67-319.	Repealed. Laws 2008, LB 707, § 5.
67-320.	Repealed. Laws 2008, LB 707, § 5.
67-321.	Repealed. Laws 2008, LB 707, § 5.
67-322.	Repealed. Laws 2008, LB 707, § 5.
67-323.	Repealed. Laws 2008, LB 707, § 5.
67-324.	Repealed. Laws 2008, LB 707, § 5.
67-325.	Repealed. Laws 2008, LB 707, § 5.
67-326.	Repealed. Laws 2008, LB 707, § 5.
67-327.	Repealed. Laws 2008, LB 707, § 5.
67-328.	Repealed. Laws 2008, LB 707, § 5.
67-329.	Repealed. Laws 2008, LB 707, § 5.
67-330.	Repealed. Laws 2008, LB 707, § 5.
67-331.	Repealed. Laws 2008, LB 707, § 5.
67-332.	Repealed. Laws 2008, LB 707, § 5.
67-333.	Repealed. Laws 2008, LB 707, § 5.
67-334.	Repealed. Laws 2008, LB 707, § 5.
67-335.	Repealed. Laws 2008, LB 707, § 5.
67-336.	Repealed. Laws 2008, LB 707, § 5.
67-337.	Repealed. Laws 2008, LB 707, § 5.
67-338.	Repealed. Laws 2008, LB 707, § 5.
67-339.	Repealed. Laws 2008, LB 707, § 5.
67-340.	Repealed. Laws 2008, LB 707, § 5.
67-341.	Repealed. Laws 2008, LB 707, § 5.
67-342.	Repealed. Laws 2008, LB 707, § 5.
67-343.	Repealed. Laws 2008, LB 707, § 5.
67-344.	Repealed. Laws 2008, LB 707, § 5.
67-345.	Repealed. Laws 2008, LB 707, § 5.
67-346.	Repealed. Laws 2008, LB 707, § 5.

67-301 Repealed. Laws 2008, LB 707, § 5.

67-302 Repealed. Laws 2008, LB 707, § 5.

67-303 Repealed. Laws 2008, LB 707, § 5.

67-304 Repealed. Laws 2008, LB 707, § 5.

67-305 Repealed. Laws 2008, LB 707, § 5.

67-306 Repealed. Laws 2008, LB 707, § 5.

67-307 Repealed. Laws 2008, LB 707, § 5.

67-308 Repealed. Laws 2008, LB 707, § 5.

67-309 Repealed. Laws 2008, LB 707, § 5.

67-310 Repealed. Laws 2008, LB 707, § 5.

- 67-311 Repealed. Laws 2008, LB 707, § 5.
- 67-312 Repealed. Laws 2008, LB 707, § 5.
- 67-313 Repealed. Laws 2008, LB 707, § 5.
- 67-314 Repealed. Laws 2008, LB 707, § 5.
- 67-315 Repealed. Laws 2008, LB 707, § 5.
- 67-316 Repealed. Laws 2008, LB 707, § 5.
- 67-317 Repealed. Laws 2008, LB 707, § 5.
- 67-318 Repealed. Laws 2008, LB 707, § 5.
- 67-319 Repealed. Laws 2008, LB 707, § 5.
- 67-320 Repealed. Laws 2008, LB 707, § 5.
- 67-321 Repealed. Laws 2008, LB 707, § 5.
- 67-322 Repealed. Laws 2008, LB 707, § 5.
- 67-323 Repealed. Laws 2008, LB 707, § 5.
- 67-324 Repealed. Laws 2008, LB 707, § 5.
- 67-325 Repealed. Laws 2008, LB 707, § 5.
- 67-326 Repealed. Laws 2008, LB 707, § 5.
- 67-327 Repealed. Laws 2008, LB 707, § 5.
- 67-328 Repealed. Laws 2008, LB 707, § 5.
- 67-329 Repealed. Laws 2008, LB 707, § 5.
- 67-330 Repealed. Laws 2008, LB 707, § 5.
- 67-331 Repealed. Laws 2008, LB 707, § 5.
- 67-332 Repealed. Laws 2008, LB 707, § 5.
- 67-333 Repealed. Laws 2008, LB 707, § 5.
- 67-334 Repealed. Laws 2008, LB 707, § 5.
- 67-335 Repealed. Laws 2008, LB 707, § 5.
- 67-336 Repealed. Laws 2008, LB 707, § 5.
- 67-337 Repealed. Laws 2008, LB 707, § 5.
- 67-338 Repealed. Laws 2008, LB 707, § 5.
- 67-339 Repealed. Laws 2008, LB 707, § 5.
- 67-340 Repealed. Laws 2008, LB 707, § 5.
- 67-341 Repealed. Laws 2008, LB 707, § 5.

67-342 Repealed. Laws 2008, LB 707, § 5.

67-343 Repealed. Laws 2008, LB 707, § 5.

67-344 Repealed. Laws 2008, LB 707, § 5.

67-345 Repealed. Laws 2008, LB 707, § 5.

67-346 Repealed. Laws 2008, LB 707, § 5.

ARTICLE 4

UNIFORM PARTNERSHIP ACT OF 1998

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- 67-466. Repealed. Laws 2008, LB 707, § 5.
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PART I—GENERAL PROVISIONS

67-401 Act, how cited.

Sections 67-401 to 67-467 shall be known and may be cited as the Uniform Partnership Act of 1998.

Source: Laws 1997, LB 523, § 1; Laws 2016, LB1050, § 1.

67-402 Terms, defined.

For purposes of the Uniform Partnership Act of 1998:

- (1) Business includes every trade, occupation, and profession;
- (2) Debtor in bankruptcy means a person who is the subject of:
 - (a) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or
 - (b) A comparable order under federal, state, or foreign law governing insolvency;
- (3) Distribution means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee;
- (4) Foreign limited liability partnership means a partnership that:
 - (a) Is formed under laws other than the laws of this state; and
 - (b) Has the status of a limited liability partnership under those laws;
- (5) Limited liability partnership means a partnership that has filed a statement of qualification under section 67-454 and does not have a similar statement in effect in any other jurisdiction;
- (6) Partnership means an association of two or more persons to carry on as co-owners a business for profit formed under section 67-410, predecessor law, or comparable law of another jurisdiction;
- (7) Partnership agreement means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement;
- (8) Partnership at will means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking;
- (9) Partnership interest or partner's interest in the partnership means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights;
- (10) Person means an individual, corporation, limited liability company, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;
- (11) Property means all property, real, personal, or mixed, tangible or intangible, or any interest therein;
- (12) State means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States;
- (13) Statement means a statement of partnership authority under section 67-415, a statement of denial under section 67-416, a statement of dissociation under section 67-437, a statement of dissolution under section 67-443, a statement of merger under section 67-452, a statement of qualification under section 67-454, a statement of foreign qualification under section 67-458, or an amendment or cancellation of any of the foregoing; and
- (14) Transfer includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

Source: Laws 1997, LB 523, § 2.

67-403 Knowledge and notice.

- (1) A person knows a fact if the person has actual knowledge of it.
- (2) A person has notice of a fact if the person:
 - (a) Knows of it;
 - (b) Has received a notification of it; or
 - (c) Has reason to know it exists from all of the facts known to the person at the time in question.
- (3) A person notifies or gives a notification to another by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person learns of it.
- (4) A person receives a notification when the notification:
 - (a) Comes to the person's attention; or
 - (b) Is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.
- (5) Except as otherwise provided in subsection (6) of this section, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.
- (6) A partner's knowledge, notice, or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

Source: Laws 1997, LB 523, § 3.

67-404 Effect of partnership agreement; nonwaivable provisions.

- (1) Except as otherwise provided in subsection (2) of this section, relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, the Uniform Partnership Act of 1998 governs relations among the partners and between the partners and the partnership.
- (2) The partnership agreement may not:
 - (a) Vary the rights and duties under section 67-406 except to eliminate the duty to provide copies of statements to all of the partners;
 - (b) Unreasonably restrict the right of access to books and records under subsection (2) of section 67-423;
 - (c) Eliminate the duty of loyalty under subsection (2) of section 67-424 or subdivision (2)(c) of section 67-433, but:

- (i) The partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; or
- (ii) All of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;
- (d) Unreasonably reduce the duty of care under subsection (3) of section 67-424 or subdivision (2)(c) of section 67-433;
- (e) Eliminate the obligation of good faith and fair dealing under subsection (4) of section 67-424, but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;
- (f) Vary the power to dissociate as a partner under subsection (1) of section 67-432, except to require the notice under subdivision (1) of section 67-431 to be in writing;
- (g) Vary the right of a court to expel a partner in the events specified in subdivision (5) of section 67-431;
- (h) Vary the requirement to wind up the partnership business in cases specified in subdivision (4), (5), or (6) of section 67-439;
- (i) Vary the law applicable to a limited liability partnership under subsection (2) of section 67-407; or
- (j) Restrict rights of third parties under the act.

Source: Laws 1997, LB 523, § 4.

Except for limited exceptions, the provisions of the Uniform Partnership Act of 1998 are default rules that govern the relations among partners in situations they have not addressed in a partnership agreement. *Shoemaker v. Shoemaker*, 275 Neb. 112, 745 N.W.2d 299 (2008).

67-405 Supplemental principles of law.

- (1) Unless displaced by particular provisions of the Uniform Partnership Act of 1998, the principles of law and equity supplement the act.
- (2) If an obligation to pay interest arises under the act and the rate is not specified, the rate is that fixed pursuant to section 45-103.

Source: Laws 1997, LB 523, § 5; Laws 2015, LB247, § 1.

Under the former law, if an obligation to pay interest arises and the rate is not specified, the rate is that specified in section 45-104.01. *Robertson v. Jacobs Cattle Co.*, 285 Neb. 859, 830 N.W.2d 191 (2013).

67-406 Execution, filing, and recording of statements.

- (1) A statement may be filed in the office of the Secretary of State. A certified copy of a statement that is filed in an office in another state may be filed in the office of the Secretary of State. Either filing has the effect provided in the Uniform Partnership Act of 1998 with respect to partnership property located in or transactions that occur in this state.
- (2) For transfers of real property, a certified copy of a statement that has been filed in the office of the Secretary of State and recorded in the office of the register of deeds has the effect provided for recorded statements in the act. A recorded statement that is not a certified copy of a statement filed in the office of the Secretary of State does not have the effect provided for recorded statements in the act.

(3) A statement filed by a partnership must be executed by at least two partners. Other statements must be executed by a partner or other person authorized by the act. An individual who executes a statement as, or on behalf of, a partner or other person named as a partner in a statement shall personally declare under penalty of perjury that the contents of the statement are accurate.

(4) A person authorized by the act to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement, and states the substance of the amendment or cancellation.

(5) A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

(6) The Secretary of State may collect a fee for filing or providing a certified copy of a statement as provided in section 67-462. The register of deeds may collect a fee for recording a statement as provided in section 33-109.

Source: Laws 1997, LB 523, § 6.

67-407 Governing law.

(1) Except as otherwise provided in subsection (2) of this section, the law of the jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership.

(2) The law of this state governs relations among the partners and between the partners and the partnership and the liability of partners for an obligation of a limited liability partnership.

Source: Laws 1997, LB 523, § 7.

67-408 Partnership subject to amendment or repeal of act.

A partnership governed by the Uniform Partnership Act of 1998 is subject to any amendment to or repeal of the act.

Source: Laws 1997, LB 523, § 8.

PART II—NATURE OF PARTNERSHIP

67-409 Partnership as entity; limited liability partnership; treatment.

(1) A partnership is an entity distinct from its partners.

(2) A limited liability partnership is a syndicate for purposes of Article XII, section 8, of the Constitution of Nebraska, except that a registered limited liability partnership in which the partners are members of a family, or a trust created for the benefit of a member of that family, related to one another within the fourth degree of kindred according to the rules of civil law, or their spouses, at least one of whom is a person residing on or actively engaged in the day-to-day labor and management of the farm or ranch and none of whom are nonresident aliens, is not a syndicate for purposes of Article XII, section 8, of the Constitution of Nebraska. A limited liability partnership continues to be the same entity that existed before the filing of a statement of qualification under section 67-454.

Source: Laws 1997, LB 523, § 9.

Note: Article XII, section 8, of the Constitution of Nebraska is unconstitutional as a violation of the dormant Commerce Clause, *Jones v. Gale*, 470 F.3d 1261 (8th Cir. 2006).

67-410 Formation of partnership.

(1) Except as otherwise provided in subsection (2) of this section, the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.

(2) An association formed under a statute other than the Uniform Partnership Act of 1998, a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under the act.

(3) In determining whether a partnership is formed, the following rules apply:

(a) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property;

(b) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived; and

(c) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:

(i) Of a debt by installments or otherwise;

(ii) For services as an independent contractor or of wages or other compensation to an employee;

(iii) Of rent;

(iv) Of an annuity or other retirement or health benefit to a beneficiary, representative, or designee of a deceased or retired partner;

(v) Of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral; or

(vi) For the sale of the goodwill of a business or other property by installments or otherwise.

Source: Laws 1997, LB 523, § 10.

A business qualifies as a partnership under the “business for profit” element of subsection (1) of this section so long as the parties intended to carry on a business with the expectation of profits. In re *Dissolution & Winding Up of KeyTronics*, 274 Neb. 936, 744 N.W.2d 425 (2008).

Being “co-owners” of a business for profit does not refer to the co-ownership of property, but to the co-ownership of the business intended to garner profits. In re *Dissolution & Winding Up of KeyTronics*, 274 Neb. 936, 744 N.W.2d 425 (2008).

If the parties’ voluntary actions objectively form a relationship in which they carry on as co-owners of a business for profit, then they may inadvertently create a partnership despite their expressed subjective intention not to do so. In re *Dissolution & Winding Up of KeyTronics*, 274 Neb. 936, 744 N.W.2d 425 (2008).

In both actions inter sese between alleged partners and actions by a third party against an alleged partnership, the party

asserting the existence of a partnership must prove that relationship by a preponderance of the evidence. In re *Dissolution & Winding Up of KeyTronics*, 274 Neb. 936, 744 N.W.2d 425 (2008).

In considering the parties’ intent to form an association, it is generally considered relevant how the parties characterize their relationship or how they have previously referred to one another. In re *Dissolution & Winding Up of KeyTronics*, 274 Neb. 936, 744 N.W.2d 425 (2008).

The objective indicia of co-ownership required for a partnership are commonly considered to be (1) profit sharing, (2) control sharing, (3) loss sharing, (4) contribution, and (5) co-ownership of property, but no single indicium is either necessary or sufficient to prove co-ownership. In re *Dissolution & Winding Up of KeyTronics*, 274 Neb. 936, 744 N.W.2d 425 (2008).

67-411 Partnership property.

Property acquired by a partnership is property of the partnership and not of the partners individually.

Source: Laws 1997, LB 523, § 11.

67-412 When property is partnership property.

(1) Property is partnership property if acquired in the name of:

(a) The partnership; or

(b) One or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

(2) Property is acquired in the name of the partnership by a transfer to:

(a) The partnership in its name; or

(b) One or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

(3) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

(4) Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.

Source: Laws 1997, LB 523, § 12.

In determining whether a party has rebutted the presumption in subsection (3) of this section, no single factor or combination of factors is dispositive. *Mogensen v. Mogensen*, 273 Neb. 208, 729 N.W.2d 44 (2007).

The presumption in subsection (3) of this section can apply when the partnership provides only a portion of the purchase

price, and it can apply even though a third party who is not a partner to the firm holds title. *Mogensen v. Mogensen*, 273 Neb. 208, 729 N.W.2d 44 (2007).

PART III—RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP

67-413 Partner agent of partnership.

Subject to the effect of a statement of partnership authority under section 67-415:

(1) Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority; and

(2) An act of a partner which is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

Source: Laws 1997, LB 523, § 13.

67-414 Transfer of partnership property.

(1) Partnership property may be transferred as follows:

(a) Subject to the effect of a statement of partnership authority under section 67-415, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name;

(b) Partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held; or

(c) Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(2) A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under section 67-413 and:

(a) As to a subsequent transferee who gave value for property transferred under subdivisions (1)(a) and (1)(b) of this section, proves that the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership; or

(b) As to a transferee who gave value for property transferred under subdivision (1)(c) of this section, proves that the transferee knew or had received a notification that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(3) A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under subsection (2) of this section, from any earlier transferee of the property.

(4) If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

Source: Laws 1997, LB 523, § 14.

67-415 Statement of partnership authority.

(1) A partnership may file a statement of partnership authority, which:

(a) Must include:

(i) The name of the partnership;

(ii) The street address of its chief executive office and of one office in this state, if there is one;

(iii) The names and mailing addresses of all of the partners or the name and street address and post office box number, if any, of an agent appointed and maintained by the partnership for the purpose of subsection (2) of this section; and

(iv) The names of the partners authorized to execute an instrument transferring real property held in the name of the partnership; and

(b) May state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

(2) If a statement of partnership authority names an agent, the agent shall maintain a list of the names and mailing addresses of all of the partners and make it available to any person on request for good cause shown.

(3) If a filed statement of partnership authority is executed pursuant to subsection (3) of section 67-406 and states the name of the partnership but does not contain all of the other information required by subsection (1) of this section, the statement nevertheless operates with respect to a person not a partner as provided in subsections (4) and (5) of this section.

(4) Except as otherwise provided in subsection (7) of this section, a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

(a) Except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority; and

(b) A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed statement of partnership authority recorded in the office of the register of deeds is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office of the register of deeds. The recording in the office of the register of deeds of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

(5) A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office of the register of deeds.

(6) Except as otherwise provided in subsections (4) and (5) of this section and sections 67-437 and 67-443, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

(7) Unless earlier canceled, a filed statement of partnership authority is canceled by operation of law five years after the date on which the statement, or the most recent amendment, was filed with the Secretary of State.

Source: Laws 1997, LB 523, § 15; Laws 2008, LB383, § 6.

67-416 Statement of denial.

A partner or other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to subsection (2) of section 67-415 may file a statement of denial stating the name of the partnership and the fact that is being denied, which may include denial of a

person's authority or status as a partner. A statement of denial is a limitation on authority as provided in subsections (4) and (5) of section 67-415.

Source: Laws 1997, LB 523, § 16.

67-417 Partnership liable for partner's actionable conduct.

(1) A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.

(2) If, in the course of the partnership's business or while acting with authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss.

Source: Laws 1997, LB 523, § 17.

67-418 Partner's liability.

(1) Except as otherwise provided in subsections (2) and (3) of this section, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

(2) A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred before the person's admission as a partner.

(3) An obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or so acting as a partner. This subsection applies notwithstanding anything inconsistent in the partnership agreement that existed immediately before the vote required to become a limited liability partnership under subsection (2) of section 67-454.

Source: Laws 1997, LB 523, § 18.

67-419 Actions by and against partnership and partners.

(1) A partnership may sue and be sued in the name of the partnership.

(2) An action may be brought against the partnership and, to the extent not inconsistent with section 67-418, any or all of the partners in the same action or in separate actions.

(3) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.

(4) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under section 67-418 and:

(a) A judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(b) The partnership is a debtor in bankruptcy;

(c) The partner has agreed that the creditor need not exhaust partnership assets;

(d) A court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(e) Liability is imposed on the partner by law or contract independent of the existence of the partnership.

(5) This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under section 67-420.

Source: Laws 1997, LB 523, § 19.

67-420 Liability of purported partner.

(1) If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one or more persons not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable with respect to that liability as if the purported partner were a partner. If no partnership liability results, the purported partner is liable with respect to that liability jointly and severally with any other person consenting to the representation.

(2) If a person is thus represented to be a partner in an existing partnership, or with one or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

(3) A person is not liable as a partner merely because the person is named by another in a statement of partnership authority.

(4) A person does not continue to be liable as a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.

(5) Except as otherwise provided in subsections (1) and (2) of this section, persons who are not partners as to each other are not liable as partners to other persons.

Source: Laws 1997, LB 523, § 20.

PART IV—RELATIONS OF PARTNERS TO EACH OTHER AND TO PARTNERSHIP

67-421 Partner's rights and duties.

- (1) Each partner is deemed to have an account that is:
- (a) Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and
 - (b) Charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.
- (2) Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.
- (3) A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property.
- (4) A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.
- (5) A payment or advance made by a partner which gives rise to a partnership obligation under subsection (3) or (4) of this section constitutes a loan to the partnership which accrues interest from the date of the payment or advance.
- (6) Each partner has equal rights in the management and conduct of the partnership business.
- (7) A partner may use or possess partnership property only on behalf of the partnership.
- (8) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.
- (9) A person may become a partner only with the consent of all of the partners.
- (10) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.
- (11) This section does not affect the obligations of a partnership to other persons under section 67-413.

Source: Laws 1997, LB 523, § 21.

67-422 Distributions in kind.

A partner has no right to receive, and may not be required to accept, a distribution in kind.

Source: Laws 1997, LB 523, § 22.

67-423 Partner's rights and duties with respect to information.

- (1) A partnership shall keep its books and records, if any, at its chief executive office.
- (2) A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which

they were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

(3) Each partner and the partnership shall furnish to a partner, and to the legal representative of a deceased partner or partner under legal disability:

(a) Without demand, any information concerning the partnership's business and affairs reasonably required for the proper exercise of the partner's rights and duties under the partnership agreement or the Uniform Partnership Act of 1998; and

(b) On demand, any other information concerning the partnership's business and affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

Source: Laws 1997, LB 523, § 23.

67-424 General standards of partner's conduct.

(1) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in subsections (2) and (3) of this section.

(2) A partner's duty of loyalty to the partnership and the other partners is limited to the following:

(a) To account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity;

(b) To refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership; and

(c) To refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.

(3) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(4) A partner shall discharge the duties to the partnership and the other partners under the Uniform Partnership Act of 1998 or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(5) A partner does not violate a duty or obligation under the act or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.

(6) A partner may lend money to and transact other business with the partnership, and as to each loan or transaction the rights and obligations of the partner are the same as those of a person who is not a partner, subject to other applicable law.

(7) This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

Source: Laws 1997, LB 523, § 24.

67-425 Actions by partnership and partners.

(1) A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

(2) A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to:

- (a) Enforce the partner's rights under the partnership agreement;
 - (b) Enforce the partner's rights under the Uniform Partnership Act of 1998, including:
 - (i) The partner's rights under section 67-421, 67-423, or 67-424;
 - (ii) The partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to section 67-434 or enforce any other right under sections 67-431 to 67-433 or 67-434 to 67-438; or
 - (iii) The partner's right to compel a dissolution and winding up of the partnership business under section 67-439 or enforce any other right under sections 67-439 to 67-445; or
 - (c) Enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.
- (3) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

Source: Laws 1997, LB 523, § 25.

67-426 Continuation of partnership beyond definite term or particular undertaking.

(1) If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

(2) If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the partnership will continue.

Source: Laws 1997, LB 523, § 26.

PART V—TRANSFEREES AND CREDITORS OF PARTNER

67-427 Partner not co-owner of partnership property.

A partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily.

Source: Laws 1997, LB 523, § 27.

67-428 Partner's transferable interest in partnership.

The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest is personal property.

Source: Laws 1997, LB 523, § 28.

67-429 Transfer of partner's transferable interest.

(1) A transfer, in whole or in part, of a partner's transferable interest in the partnership:

- (a) Is permissible;
- (b) Does not by itself cause the partner's dissociation or a dissolution and winding up of the partnership business; and
- (c) Does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions, or to inspect or copy the partnership books or records.

(2) A transferee of a partner's transferable interest in the partnership has a right:

- (a) To receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;
- (b) To receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; and
- (c) To seek under subdivision (6) of section 67-439 a judicial determination that it is equitable to wind up the partnership business.

(3) In a dissolution and winding up, a transferee is entitled to an account of partnership transactions only from the date of the latest account agreed to by all of the partners.

(4) Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.

(5) A partnership need not give effect to a transferee's rights under this section until it has notice of the transfer.

(6) A transfer of a partner's transferable interest in the partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

Source: Laws 1997, LB 523, § 29.

67-430 Partner's transferable interest subject to charging order.

(1) On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver

of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require.

(2) A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

(3) At any time before foreclosure, an interest charged may be redeemed:

(a) By the judgment debtor;

(b) With property other than partnership property, by one or more of the other partners; or

(c) With partnership property, by one or more of the other partners with the consent of all of the partners whose interests are not so charged.

(4) The Uniform Partnership Act of 1998 does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.

(5) This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

Source: Laws 1997, LB 523, § 30.

PART VI—PARTNER'S DISSOCIATION

67-431 Events causing partner's dissociation.

A partner is dissociated from a partnership upon the occurrence of any of the following events:

(1) The partnership's having notice of the partner's express will to withdraw as a partner or on a later date specified by the partner;

(2) An event agreed to in the partnership agreement as causing the partner's dissociation;

(3) The partner's expulsion pursuant to the partnership agreement;

(4) The partner's expulsion by the unanimous vote of the other partners if:

(a) It is unlawful to carry on the partnership business with that partner;

(b) There has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes, or a court order charging the partner's interest, which has not been foreclosed;

(c) Within ninety days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(d) A partnership that is a partner has been dissolved and its business is being wound up;

(5) On application by the partnership or another partner, the partner's expulsion by judicial determination because:

(a) The partner engaged in wrongful conduct that adversely and materially affected the partnership business;

(b) The partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under section 67-424; or

(c) The partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner;

(6) The partner's:

(a) Becoming a debtor in bankruptcy;

(b) Executing an assignment for the benefit of creditors;

(c) Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or

(d) Failing, within ninety days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within ninety days after the expiration of a stay to have the appointment vacated;

(7) In the case of a partner who is an individual:

(a) The partner's death;

(b) The appointment of a guardian or general conservator for the partner; or

(c) A judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;

(8) In the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee;

(9) In the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative; or

(10) Termination of a partner who is not an individual, partnership, corporation, trust, or estate.

Source: Laws 1997, LB 523, § 31.

Grounds for dissociation of a partnership exist when partners execute leases to rent farmland but do not pay rent to the partnership. *Robertson v. Jacobs Cattle Co.*, 285 Neb. 859, 830 N.W.2d 191 (2013).

When grounds for both dissociation and dissolution of a partnership exist, a court may exercise its discretion to deter-

mine the appropriate remedy. *Robertson v. Jacobs Cattle Co.*, 285 Neb. 859, 830 N.W.2d 191 (2013).

Under the Uniform Partnership Act of 1998, a partner's voluntary withdrawal does not result in mandatory dissolution of the partnership; it results in a partner's dissociation. *Shoemaker v. Shoemaker*, 275 Neb. 112, 745 N.W.2d 299 (2008).

67-432 Partner's power to dissociate; wrongful dissociation.

(1) A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to subdivision (1) of section 67-431.

(2) A partner's dissociation is wrongful only if:

(a) It is in breach of an express provision of the partnership agreement; or

(b) In the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:

(i) The partner withdraws by express will, unless the withdrawal follows within ninety days after another partner's dissociation by death or otherwise under subdivisions (6) through (10) of section 67-431 or wrongful dissociation under this subsection;

(ii) The partner is expelled by judicial determination under subdivision (5) of section 67-431;

(iii) The partner is dissociated by becoming a debtor in bankruptcy; or

(iv) In the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because it willfully dissolved or terminated.

(3) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the partner to the partnership or to the other partners.

Source: Laws 1997, LB 523, § 32.

67-433 Effect of partner's dissociation.

(1) If a partner's dissociation results in a dissolution and winding up of the partnership business, sections 67-439 to 67-445 apply; otherwise, sections 67-434 to 67-438 apply.

(2) Upon a partner's dissociation:

(a) The partner's right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in section 67-441;

(b) The partner's duty of loyalty under subdivision (2)(c) of section 67-424 terminates; and

(c) The partner's duty of loyalty under subdivisions (2)(a) and (2)(b) of section 67-424 and duty of care under subsection (3) of section 67-424 continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant to section 67-441.

Source: Laws 1997, LB 523, § 33.

Under subsection (1) of this section, the 1998 Uniform Partnership Act creates separate paths through which a dissociated partner can recover partnership interests—dissolution with winding up of partnership business or mandatory buyout. *Shoemaker v. Shoemaker*, 275 Neb. 112, 745 N.W.2d 299 (2008).

When a partnership agreement mandates a buyout of a withdrawing partner's interest but fails to specify a remedy for the partnership's failure to pay, or to timely pay, the buyout price, the default rules for mandatory buyouts apply. *Shoemaker v. Shoemaker*, 275 Neb. 112, 745 N.W.2d 299 (2008).

PART VII—PARTNER'S DISSOCIATION WHEN BUSINESS NOT WOUND UP

67-434 Purchase of dissociated partner's interest.

(1) If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under section 67-439, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection (2) of this section.

(2) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under subsection (2)

of section 67-445 if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were wound up as of that date. Interest must be paid from the date of dissociation to the date of payment.

(3) Damages for wrongful dissociation under subsection (2) of section 67-432, and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, must be offset against the buyout price. Interest must be paid from the date the amount owed becomes due to the date of payment.

(4) A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under section 67-435.

(5) If no agreement for the purchase of a dissociated partner's interest is reached within one hundred twenty days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection (3) of this section.

(6) If a deferred payment is authorized under subsection (8) of this section, the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection (3) of this section, stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

(7) The payment or tender required by subsection (5) or (6) of this section must be accompanied by the following:

(a) A statement of partnership assets and liabilities as of the date of dissociation;

(b) The latest available partnership balance sheet and income statement, if any;

(c) An explanation of how the estimated amount of the payment was calculated; and

(d) Written notice that the payment is in full satisfaction of the obligation to purchase unless, within one hundred twenty days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under subsection (3) of this section, or other terms of the obligation to purchase.

(8) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.

(9) A dissociated partner may maintain an action against the partnership, pursuant to subdivision (2)(b)(ii) of section 67-425, to determine the buyout price of that partner's interest, any offsets under subsection (3) of this section, or other terms of the obligation to purchase. The action must be commenced within one hundred twenty days after the partnership has tendered payment or

an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection (3) of this section, and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection (8) of this section, the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection (7) of this section.

Source: Laws 1997, LB 523, § 34.

In calculating a buyout distribution for dissociating partners, the hypothetical sale must be based on all of the partnership's assets and not just selected assets. *Robertson v. Jacobs Cattle Co.*, 292 Neb. 195, 874 N.W.2d 1 (2015).

Interest on the buyout price of a dissociated partner's interest "must be paid from the date of dissociation to the date of payment." *Robertson v. Jacobs Cattle Co.*, 285 Neb. 859, 830 N.W.2d 191 (2013).

The date of dissociation when dissociation is by judicial expulsion is the date of the judicial order. *Robertson v. Jacobs Cattle Co.*, 285 Neb. 859, 830 N.W.2d 191 (2013).

If a partnership agreement is silent on profit distributions to a withdrawing partner after dissociation but before completion of

the buyout of the withdrawing partner's interest, the 1998 Uniform Partnership Act does not authorize profit distributions. *Shoemaker v. Shoemaker*, 275 Neb. 112, 745 N.W.2d 299 (2008).

Nothing in this section provides that dissolution of a partnership is a remedy for a partnership's failure to timely pay an estimated buyout price to a withdrawing partner. *Shoemaker v. Shoemaker*, 275 Neb. 112, 745 N.W.2d 299 (2008).

Subsection (9) of this section provides a withdrawing partner's remedies for a partnership's failure to timely pay a buyout price or its unsatisfactory offer. *Shoemaker v. Shoemaker*, 275 Neb. 112, 745 N.W.2d 299 (2008).

67-435 Dissociated partner's power to bind and liability to partnership.

(1) For two years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under sections 67-446 to 67-453, is bound by an act of the dissociated partner which would have bound the partnership under section 67-413 before dissociation only if at the time of entering into the transaction the other party:

- (a) Reasonably believed that the dissociated partner was then a partner;
- (b) Did not have notice of the partner's dissociation; and
- (c) Is not deemed to have had knowledge under subsection (5) of section 67-415 or notice under subsection (3) of section 67-437.

(2) A dissociated partner is liable to the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under subsection (1) of this section.

Source: Laws 1997, LB 523, § 35.

67-436 Dissociated partner's liability to other persons.

(1) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation, except as otherwise provided in subsection (2) of this section.

(2) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under sections 67-446 to 67-453, within two years after the partner's dissociation,

only if the partner is liable for the obligation under section 67-418 and at the time of entering into the transaction the other party:

- (a) Reasonably believed that the dissociated partner was then a partner;
- (b) Did not have notice of the partner's dissociation; and
- (c) Is not deemed to have had knowledge under subsection (5) of section 67-415 or notice under subsection (3) of section 67-437.

(3) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

(4) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

Source: Laws 1997, LB 523, § 36.

67-437 Statement of dissociation.

(1) A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

(2) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of subsections (4) and (5) of section 67-415.

(3) For the purposes of subdivision (1)(c) of section 67-435 and subdivision (2)(c) of section 67-436, a person not a partner is deemed to have notice of the dissociation ninety days after the statement of dissociation is filed.

Source: Laws 1997, LB 523, § 37.

67-438 Continued use of partnership name.

Continued use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

Source: Laws 1997, LB 523, § 38.

PART VIII—WINDING UP PARTNERSHIP BUSINESS

67-439 Events causing dissolution and winding up of partnership business.

A partnership is dissolved, and its business must be wound up, only upon the occurrence of any of the following events:

(1) In a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated under subdivisions (2) through (10) of section 67-431, of that partner's express will to withdraw as a partner, or on a later date specified by the partner;

(2) In a partnership for a definite term or particular undertaking:

(a) Within ninety days after a partner's dissociation by death or otherwise under subdivisions (6) through (10) of section 67-431 or wrongful dissociation under subsection (2) of section 67-432, the express will of at least a majority of the remaining partners to wind up the partnership business, for which purpose a partner's rightful dissociation pursuant to subdivision (2)(b)(i) of section

67-432 constitutes the expression of that partner's will to wind up the partnership business;

(b) The express will of all of the partners to wind up the partnership business; or

(c) The expiration of the term or the completion of the undertaking;

(3) An event agreed to in the partnership agreement resulting in the winding up of the partnership business;

(4) An event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within ninety days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section;

(5) On application by a partner, a judicial determination that:

(a) The economic purpose of the partnership is likely to be unreasonably frustrated;

(b) Another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner; or

(c) It is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement; or

(6) On application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business:

(a) After the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or

(b) At any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.

Source: Laws 1997, LB 523, § 39.

When grounds for both dissociation and dissolution of a partnership exist, a court may exercise its discretion to determine the appropriate remedy. *Robertson v. Jacobs Cattle Co.*, 285 Neb. 859, 830 N.W.2d 191 (2013).

Dissolution of a partnership for a partner's voluntary withdrawal under subsection (1) of this section is a default rule that applies only when the partnership agreement does not provide

for the partnership business to continue. *Shoemaker v. Shoemaker*, 275 Neb. 112, 745 N.W.2d 299 (2008).

The 1998 Uniform Partnership Act does not require remaining partners to strictly comply with a buyout provision in a partnership agreement to prevent dissolution upon the voluntary withdrawal of a partner; strict compliance is inconsistent with the act's provision of remedies for the withdrawing partner. *Shoemaker v. Shoemaker*, 275 Neb. 112, 745 N.W.2d 299 (2008).

67-440 Partnership continues after dissolution.

(1) Subject to subsection (2) of this section, a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.

(2) At any time after the dissolution of a partnership and before the winding up of its business is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership's business wound up and the partnership terminated. In that event:

(a) The partnership resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if dissolution had never occurred; and

(b) The rights of a third party accruing under subdivision (1) of section 67-442 or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver may not be adversely affected.

Source: Laws 1997, LB 523, § 40.

67-441 Right to wind up partnership business.

(1) After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, but on application of any partner, partner's legal representative, or transferee, the district court in the county where the chief executive office is or was last located or the district court of Lancaster County, for good cause shown, may order judicial supervision of the winding up.

(2) The legal representative of the last surviving partner may wind up a partnership's business.

(3) A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to section 67-445, settle disputes by mediation or arbitration, and perform other necessary acts.

Source: Laws 1997, LB 523, § 41.

67-442 Partner's power to bind partnership after dissolution.

Subject to section 67-443, a partnership is bound by a partner's act after dissolution that:

- (1) Is appropriate for winding up the partnership business; or
- (2) Would have bound the partnership under section 67-413 before dissolution, if the other party to the transaction did not have notice of the dissolution.

Source: Laws 1997, LB 523, § 42.

67-443 Statement of dissolution.

(1) After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business.

(2) A statement of dissolution cancels a filed statement of partnership authority for the purposes of subsection (4) of section 67-415 and is a limitation on authority for the purposes of subsection (5) of section 67-415.

(3) For the purposes of sections 67-413 and 67-442, a person not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution ninety days after it is filed.

(4) After filing and, if appropriate, recording a statement of dissolution, a dissolved partnership may file and, if appropriate, record a statement of partnership authority which will operate with respect to a person not a partner as provided in subsections (4) and (5) of section 67-415 in any transaction,

whether or not the transaction is appropriate for winding up the partnership business.

Source: Laws 1997, LB 523, § 43.

67-444 Partner's liability to other partners after dissolution.

(1) Except as otherwise provided in subsection (2) of this section and section 67-418, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under section 67-442.

(2) A partner who, with knowledge of the dissolution, incurs a partnership liability under subdivision (2) of section 67-442 by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability.

Source: Laws 1997, LB 523, § 44.

67-445 Settlement of accounts and contributions among partners.

(1) In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, must be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection (2) of this section.

(2) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under section 67-418.

(3) If a partner fails to contribute the full amount required under subsection (2) of this section, all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations for which they are personally liable under section 67-418. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under section 67-418.

(4) After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement and for which the partner is personally liable under section 67-418.

(5) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

(6) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.

Source: Laws 1997, LB 523, § 45.

In calculating a buyout distribution for dissociating partners, the hypothetical sale must be based on all of the partnership's assets and not just selected assets. *Robertson v. Jacobs Cattle Co.*, 292 Neb. 195, 874 N.W.2d 1 (2015).

The capital gain which would be realized upon a hypothetical liquidation of the partnership's land on the date of dissociation

would constitute "profits" within the meaning of the phrase in subsection (2) of this section. *Robertson v. Jacobs Cattle Co.*, 285 Neb. 859, 830 N.W.2d 191 (2013).

PART IX—CONVERSIONS AND MERGERS

67-446 Terms, defined.

For purposes of sections 67-446 to 67-453:

- (1) General partner means a partner in a partnership and a general partner in a limited partnership;
- (2) Limited partner means a limited partner in a limited partnership;
- (3) Limited partnership means a limited partnership created under the Nebraska Uniform Limited Partnership Act, predecessor law, or comparable law of another jurisdiction; and
- (4) Partner includes both a general partner and a limited partner.

Source: Laws 1997, LB 523, § 46.

Cross References

Nebraska Uniform Limited Partnership Act, see section 67-296.

67-447 Conversion of partnership to limited partnership.

- (1) A partnership may be converted to a limited partnership pursuant to this section.
- (2) The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all of the partners or by a number or percentage specified for conversion in the partnership agreement.
- (3) After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership in the jurisdiction in which the limited partnership is to be formed. The certificate must include:
 - (a) A statement that the partnership was converted to a limited partnership from a partnership;
 - (b) Its former name; and
 - (c) A statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.
- (4) The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate. Within ten business days after the certificate of limited partnership takes effect, a partnership converting to a limited partnership shall send written notice of conversion to the last-known address of any holder of a security interest in collateral of such partnership.
- (5) A general partner who becomes a limited partner as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within ninety days after the conversion takes effect. The limited partner's liability for all other obli-

gations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in the Nebraska Uniform Limited Partnership Act.

Source: Laws 1997, LB 523, § 47; Laws 2017, LB99, § 6.

Cross References

Nebraska Uniform Limited Partnership Act, see section 67-296.

67-448 Conversion of limited partnership to partnership.

(1) A limited partnership may be converted to a partnership pursuant to this section.

(2) Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership must be approved by all of the partners.

(3) After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership.

(4) The conversion takes effect when the certificate of limited partnership is canceled. Within ten business days after the certificate of limited partnership is canceled, a limited partnership converting into a partnership shall send written notice of conversion to the last-known address of any holder of a security interest in collateral of such limited partnership.

(5) A limited partner who becomes a general partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. Except as otherwise provided in section 67-418, the partner is liable as a general partner for an obligation of the partnership incurred after the conversion takes effect.

Source: Laws 1997, LB 523, § 48; Laws 2017, LB99, § 7.

67-448.01 Domestic partnership; conversion into domestic limited liability company or foreign limited liability company; procedure; notice to holder of security interest.

A domestic partnership may convert into a domestic limited liability company pursuant to sections 21-170 to 21-184 and may convert into a foreign limited liability company in accordance with this section and the applicable law of the state of formation of such foreign limited liability company. In each case, the conversion of a domestic partnership into such limited liability company shall be made pursuant to a plan of conversion setting forth the information required in section 21-175 and such information required pursuant to the statute under which such conversion shall be effected. Unless otherwise provided in its organizational documents, a plan of conversion shall be approved by the domestic partnership by partners who own in the aggregate more than fifty percent of the interests in the profits of such partnership. Notwithstanding such approval, at any time before the articles of conversion are filed, a plan of conversion may be terminated or amended pursuant to a provision for such termination or amendment contained in the plan of conversion. Within ten business days after the articles of conversion take effect, a domestic partnership converting into a domestic limited liability company or a foreign limited liability company shall send written notice of such conversion to the last-known address of any holder of a security interest in collateral of such partnership.

Source: Laws 2016, LB1050, § 2; Laws 2017, LB99, § 8.

67-448.02 Domestic limited liability partnership; conversion into domestic limited liability company or foreign limited liability company; procedure; notice to holder of security interest.

A domestic limited liability partnership may convert into a domestic limited liability company pursuant to sections 21-170 to 21-184 and may convert into a foreign limited liability company in accordance with this section and the applicable law of the state of formation of such foreign limited liability company. In each case, the conversion of a domestic limited liability partnership into such limited liability company shall be made pursuant to a plan of conversion setting forth the information required in section 21-175 and such information required pursuant to the statute under which such conversion shall be effected. Unless otherwise provided in its organizational documents, a plan of conversion shall be approved by the domestic limited liability partnership by partners who own in the aggregate more than fifty percent of the interests in the profits of such limited liability partnership. Notwithstanding such approval, at any time before the articles of conversion are filed, a plan of conversion may be terminated or amended pursuant to a provision for such termination or amendment contained in the plan of conversion. Within ten business days after the articles of conversion take effect, a domestic limited liability partnership converting into a domestic limited liability company or a foreign limited liability company shall send written notice of such conversion to the last-known address of any holder of a security interest in collateral of such limited liability partnership.

Source: Laws 2016, LB1050, § 3; Laws 2017, LB99, § 9.

67-449 Effect of conversion; entity unchanged.

(1) A partnership or limited partnership that has been converted pursuant to sections 67-446 to 67-453 is for all purposes the same entity that existed before the conversion.

(2) When a conversion takes effect:

(a) All property owned by the converting partnership or limited partnership remains vested in the converted entity;

(b) All obligations of the converting partnership or limited partnership continue as obligations of the converted entity; and

(c) An action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion had not occurred.

Source: Laws 1997, LB 523, § 49.

67-450 Merger of partnerships.

(1) Pursuant to a plan of merger approved as provided in subsection (3) of this section, a partnership may be merged with one or more partnerships or limited partnerships.

(2) The plan of merger must set forth:

(a) The name of each partnership or limited partnership that is a party to the merger;

(b) The name of the surviving entity into which the other partnerships or limited partnerships will merge;

- (c) Whether the surviving entity is a partnership or a limited partnership and the status of each partner;
 - (d) The terms and conditions of the merger;
 - (e) The manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity or into money or other property in whole or in part; and
 - (f) The street address of the surviving entity's chief executive office.
- (3) The plan of merger must be approved in the case of a partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement.
- (4) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.
- (5) The merger takes effect on the later of:
- (a) The approval of the plan of merger by all parties to the merger, as provided in subsection (3) of this section;
 - (b) The filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or
 - (c) Any effective date specified in the plan of merger.

Source: Laws 1997, LB 523, § 50; Laws 2012, LB1018, § 15.

67-451 Effect of merger.

- (1) When a merger takes effect:
- (a) The separate existence of every partnership or limited partnership that is a party to the merger, other than the surviving entity, ceases;
 - (b) All property owned by each of the merged partnerships or limited partnerships vests in the surviving entity;
 - (c) All obligations of every partnership or limited partnership that is a party to the merger become the obligations of the surviving entity; and
 - (d) An action or proceeding pending against a partnership or limited partnership that is a party to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted as a party to the action or proceeding.
- (2) The Secretary of State of this state is the agent for service of process in an action or proceeding against a surviving foreign partnership or limited partnership to enforce an obligation of a domestic partnership or limited partnership that is a party to a merger. The surviving entity shall promptly notify the Secretary of State of the mailing address of its chief executive office and of any change of address. Upon receipt of process, the Secretary of State shall mail a copy of the process to the surviving foreign partnership or limited partnership.
- (3) A partner of the surviving partnership or limited partnership is liable for:
- (a) All obligations of a party to the merger for which the partner was personally liable before the merger;
 - (b) All other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of the entity; and

(c) Except as otherwise provided in section 67-418, all obligations of the surviving entity incurred after the merger takes effect, but those obligations may be satisfied only out of property of the entity if the partner is a limited partner.

(4) If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or limited partnership, the general partners of that party immediately before the effective date of the merger shall contribute the amount necessary to satisfy that party's obligations to the surviving entity, in the manner provided in section 67-445 or in the limited partnership act of the jurisdiction in which the party was formed, as the case may be, as if the merged party were dissolved.

(5) A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity, of which that partner was a partner, as of the date the merger takes effect. The surviving entity shall cause the partner's interest in the entity to be purchased under section 67-434 or another statute specifically applicable to that partner's interest with respect to a merger. The surviving entity is bound under section 67-435 by an act of a general partner dissociated under this subsection, and the partner is liable under section 67-436 for transactions entered into by the surviving entity after the merger takes effect.

Source: Laws 1997, LB 523, § 51.

67-452 Statement of merger.

(1) After a merger, the surviving partnership or limited partnership may file a statement that one or more partnerships or limited partnerships have merged into the surviving entity.

(2) A statement of merger must contain:

(a) The name of each partnership or limited partnership that is a party to the merger;

(b) The name of the surviving entity into which the other partnerships or limited partnership were merged;

(c) The street address of the surviving entity's chief executive office and of an office in this state, if any; and

(d) Whether the surviving entity is a partnership or a limited partnership.

(3) Except as otherwise provided in subsection (4) of this section, for the purposes of section 67-414, property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a statement of merger.

(4) For the purposes of section 67-414, real property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon recording a certified copy of the statement of merger in the office of the register of deeds.

(5) A filed and, if appropriate, recorded statement of merger, executed and declared to be accurate pursuant to subsection (3) of section 67-406, stating the name of a partnership or limited partnership that is a party to the merger in whose name property was held before the merger and the name of the

surviving entity, but not containing all of the other information required by subsection (2) of this section, operates with respect to the partnerships or limited partnerships named to the extent provided in subsections (3) and (4) of this section.

Source: Laws 1997, LB 523, § 52.

67-453 Nonexclusive.

Sections 67-446 to 67-453 are not exclusive. Partnerships or limited partnerships may be converted or merged in any other manner provided by law.

Source: Laws 1997, LB 523, § 53.

PART X—LIMITED LIABILITY PARTNERSHIP

67-454 Statement of qualification; limited liability partnership engaged in practice of law; requirements.

(1) A partnership may become a limited liability partnership pursuant to this section.

(2) The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, the vote necessary to amend those provisions.

(3) After the approval required by subsection (2) of this section, a partnership may become a limited liability partnership by filing a statement of qualification with the Secretary of State. The statement must contain:

(a) The name of the partnership;

(b) The street address of the partnership's chief executive office and, if different, the street address of an office in this state, if any;

(c) If the partnership does not have an office in this state, the name and street address and post office box number, if any, of the partnership's agent for service of process;

(d) A statement that the partnership elects to be a limited liability partnership; and

(e) A deferred effective date, if any.

(4) The agent of a limited liability partnership for service of process must be an individual who is a resident of this state or other person authorized to do business in this state.

(5) The status of a partnership as a limited liability partnership is effective on the later of the filing of the statement or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to subsection (4) of section 67-406 or revoked pursuant to section 67-456.

(6) The status of a partnership as a limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the statement of qualification under subsection (3) of this section.

(7) The filing of a statement of qualification establishes that a partnership has satisfied all conditions precedent to the qualification of the partnership as a limited liability partnership.

(8) An amendment or cancellation of a statement of qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

(9) Any limited liability partnership engaging in the practice of law in this state shall file with the Secretary of State, along with its statement of qualification, a certificate of authority issued by the Nebraska Supreme Court. In addition, such certificate of authority shall be renewed annually and filed by the limited liability partnership with its annual report required by section 67-456.

Source: Laws 1997, LB 523, § 54; Laws 2004, LB 16, § 6; Laws 2008, LB383, § 7.

67-455 Name.

(1) The name of a limited liability partnership shall:

(a) End with “registered limited liability partnership”, “limited liability partnership”, “R.L.L.P.”, “RLLP”, “L.L.P.”, or “LLP”;

(b) Not be the same as or deceptively similar to, upon the records in the office of the Secretary of State, a trade name registered in this state pursuant to sections 87-208 to 87-219.01; and

(c) Not be the same as or deceptively similar to, upon the records in the office of the Secretary of State, any other business entity name registered or on file with the Secretary of State pursuant to Nebraska law.

(2) A limited liability partnership may register under any name which is deceptively similar to, upon the records in the office of the Secretary of State, any other business entity name registered or on file with the Secretary of State pursuant to Nebraska law with the written consent of the other business entity or with the transfer of the name by the other business entity. Written consent to the use of the name or written consent to the transfer of the name shall be filed with the Secretary of State.

Source: Laws 1997, LB 523, § 55; Laws 2003, LB 464, § 9; Laws 2011, LB462, § 6.

67-456 Annual report; certificate of authority.

(1) A limited liability partnership, and a foreign limited liability partnership authorized to transact business in this state, shall file an annual report in the office of the Secretary of State which contains:

(a) The name of the limited liability partnership and the state or other jurisdiction under whose laws the foreign limited liability partnership is formed;

(b) The street address of the partnership’s chief executive office and, if different, the street address of an office of the partnership in this state, if any; and

(c) If the partnership does not have an office in this state, the name and street address and post office box number, if any, of the partnership’s current agent for service of process.

(2) Any limited liability partnership, or foreign limited liability partnership authorized to transact business in this state, engaging in the practice of law in this state shall file with its annual report a current certificate of authority from the Nebraska Supreme Court.

(3) An annual report and certificate of authority, if applicable, must be filed between January 1 and April 1 of each year following the calendar year in which a partnership files a statement of qualification or a foreign partnership becomes authorized to transact business in this state.

(4) The Secretary of State may revoke the statement of qualification of a partnership that fails to file an annual report and certificate of authority, if applicable, when due or pay the required filing fee provided in section 67-462. To do so, the Secretary of State shall provide the partnership at least sixty days' written notice of intent to revoke the statement. The notice must be mailed to the partnership at its chief executive office set forth in the last filed statement of qualification or annual report. The notice must specify the annual report or certificate of authority, if applicable, that has not been filed, the fee that has not been paid, and the effective date of the revocation. The revocation is not effective if the annual report and certificate of authority, if applicable, is filed and the fee is paid before the effective date of the revocation.

(5) A revocation under subsection (4) of this section only affects a partnership's status as a limited liability partnership and is not an event of dissolution of the partnership.

(6) A partnership whose statement of qualification has been revoked may apply to the Secretary of State for reinstatement within two years after the effective date of the revocation. The application must state:

- (a) The name of the partnership and the effective date of the revocation; and
- (b) That the ground for revocation either did not exist or has been corrected.

(7) A reinstatement under subsection (6) of this section relates back to and takes effect as of the effective date of the revocation, and the partnership's status as a limited liability partnership continues as if the revocation had never occurred.

(8) A correction or an amendment to the annual report may be filed at any time.

Source: Laws 1997, LB 523, § 56; Laws 2004, LB 16, § 7; Laws 2008, LB383, § 8; Laws 2014, LB774, § 5.

PART XI—FOREIGN LIMITED LIABILITY PARTNERSHIP

67-457 Law governing foreign limited liability partnership.

(1) The law under which a foreign limited liability partnership is formed governs relations among the partners and between the partners and the partnership and the liability of partners for obligations of the partnership.

(2) A foreign limited liability partnership may not be denied a statement of foreign qualification by reason of any difference between the law under which the partnership was formed and the law of this state.

(3) A statement of foreign qualification does not authorize a foreign limited liability partnership to engage in any business or exercise any power that a

partnership may not engage in or exercise in this state as a limited liability partnership.

Source: Laws 1997, LB 523, § 57.

67-458 Statement of foreign qualification; foreign limited liability partnership engaged in practice of law; requirements.

(1) Before transacting business in this state, a foreign limited liability partnership must file a statement of foreign qualification. The statement must contain:

(a) The name of the foreign limited liability partnership which (i) satisfies the requirements of the state or other jurisdiction under whose law it is formed, (ii) ends with “registered limited liability partnership”, “limited liability partnership”, “R.L.L.P.”, “RLLP”, “L.L.P.”, “LLP”, or similar words or abbreviations as required by the jurisdiction under whose law it is formed, and (iii) complies with the requirements of a domestic limited liability partnership as provided in subdivisions (1)(b) and (c) and subsection (2) of section 67-455;

(b) The street address of the partnership’s chief executive office and, if different, the street address of an office of the partnership in this state, if any;

(c) If there is no office of the partnership in this state, the name and street address and post office box number, if any, of the partnership’s agent for service of process; and

(d) A deferred effective date, if any.

(2) The agent of a foreign limited liability partnership for service of process must be an individual who is a resident of this state or other person authorized to do business in this state.

(3) The status of a partnership as a foreign limited liability partnership is effective on the later of the filing of the statement of foreign qualification or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to subsection (4) of section 67-406 or revoked pursuant to section 67-456.

(4) An amendment or cancellation of a statement of foreign qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

(5) Any foreign limited liability partnership engaged in the practice of law in this state shall file with the Secretary of State, along with its statement of foreign qualification, a certificate of authority issued by the Nebraska Supreme Court. In addition, such certificate of authority shall be renewed annually and filed by the foreign limited liability partnership with its annual report required by section 67-456.

Source: Laws 1997, LB 523, § 58; Laws 2004, LB 16, § 8; Laws 2008, LB383, § 9.

67-459 Effect of failure to qualify.

(1) A foreign limited liability partnership transacting business in this state may not maintain an action or proceeding in this state unless it has in effect a statement of foreign qualification.

(2) The failure of a foreign limited liability partnership to have in effect a statement of foreign qualification does not impair the validity of a contract or

act of the foreign limited liability partnership or preclude it from defending an action or proceeding in this state.

(3) A limitation on personal liability of a partner is not waived solely by transacting business in this state without a statement of foreign qualification.

(4) If a foreign limited liability partnership transacts business in this state without a statement of foreign qualification, the Secretary of State is its agent for service of process with respect to a right of action arising out of the transaction of business in this state.

Source: Laws 1997, LB 523, § 59.

67-460 Activities not constituting transacting business.

(1) Activities of a foreign limited liability partnership which do not constitute transacting business for purposes of sections 67-457 to 67-461 include:

- (a) Maintaining, defending, or settling an action or proceeding;
- (b) Holding meetings of its partners or carrying on any other activity concerning its internal affairs;
- (c) Maintaining bank accounts;
- (d) Maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities or maintaining trustees or depositories with respect to those securities;
- (e) Selling through independent contractors;
- (f) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
- (g) Creating or acquiring indebtedness, with or without a mortgage, or other security interest in property;
- (h) Collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;
- (i) Conducting an isolated transaction that is completed within thirty days and is not one in the course of similar transactions; and
- (j) Transacting business in interstate commerce.

(2) For purposes of sections 67-457 to 67-461, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection (1) of this section, constitutes transacting business in this state.

(3) This section does not apply in determining the contacts or activities that may subject a foreign limited liability partnership to service of process, taxation, or regulation under any other law of this state.

Source: Laws 1997, LB 523, § 60.

67-461 Action by Attorney General.

The Attorney General may maintain an action to restrain a foreign limited liability partnership from transacting business in this state in violation of sections 67-457 to 67-461.

Source: Laws 1997, LB 523, § 61.

PART XII—MISCELLANEOUS PROVISIONS

67-462 Fees.

The filing fee for filing a statement of partnership authority pursuant to section 67-415, a statement of qualification pursuant to section 67-454, or a statement of foreign qualification pursuant to section 67-458 is two hundred dollars plus the recording fees specified in subdivision (4) of section 33-101. The filing fee for all other filings by partnerships or limited liability partnerships pursuant to the Uniform Partnership Act of 1998 is ten dollars plus recording fees. A fee of one dollar per page shall be paid for a certified copy of any document on file pursuant to the act. The filing fees pursuant to the act shall be paid to the Secretary of State and remitted to the State Treasurer. The State Treasurer shall credit fifty percent of the fees to the General Fund and fifty percent of the fees to the Corporation Cash Fund.

Source: Laws 1997, LB 523, § 62.

67-463 Uniformity of application and construction.

The Uniform Partnership Act of 1998 shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the act among states enacting it.

Source: Laws 1997, LB 523, § 63.

67-464 Partnerships; applicability of act.

On and after January 1, 2001, the Uniform Partnership Act of 1998 governs all partnerships.

Source: Laws 1997, LB 523, § 64; Laws 2008, LB707, § 2.

67-465 Limited liability partnership; applicability of act.

After January 1, 2001, the Uniform Partnership Act of 1998 governs all limited liability partnerships.

Source: Laws 1997, LB 523, § 65; Laws 2008, LB707, § 3.

67-466 Repealed. Laws 2008, LB 707, § 5.**67-467 Savings clause.**

The Uniform Partnership Act of 1998 does not affect an action or proceeding commenced or right accrued before the act becomes operative.

Source: Laws 1997, LB 523, § 67.

PUBLIC ASSISTANCE

CHAPTER 68
PUBLIC ASSISTANCE

Article.

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Cross References

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ARTICLE 1

MISCELLANEOUS PROVISIONS

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- 68-101. Repealed. Laws 1969, c. 532, § 2.
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68-118. Repealed. Laws 1951, c. 212, § 1.
68-119. Repealed. Laws 1951, c. 212, § 1.
68-120. Repealed. Laws 1951, c. 212, § 1.
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68-101 Repealed. Laws 1969, c. 532, § 2.

68-102 Repealed. Laws 1969, c. 532, § 2.

68-103 Repealed. Laws 1983, LB 604, § 32.

68-104 Department of Health and Human Services; overseer of poor; county board; assistance; powers and duties.

The Department of Health and Human Services shall be the overseer of the poor and shall be vested with the entire and exclusive superintendence of the poor in this state, except that the county board of each county shall furnish such medical service as may be required for the poor of the county who are not eligible for other medical assistance programs and general assistance for the poor of the county. Any person who is or becomes ineligible for other medical assistance programs due to his or her own actions or inactions shall also be ineligible for medical services from the county.

The county board of each county shall administer the medical assistance provided pursuant to this section. A county board may enter into an agreement with the Department of Health and Human Services which allows the department to aid in the administration of such medical assistance program. In providing medical and hospital care for the poor, the county board shall make use of any existing facilities, including tax-supported hospitals and charitable clinics so far as the same may be available, and shall use the financial eligibility criteria established for the standard of need developed by the county pursuant to section 68-126.

A county board may transfer funds designated for public assistance to the Department of Health and Human Services for purposes of payments to providers who serve eligible recipients of medical assistance or low-income uninsured persons and meet federal and state disproportionate-share payment requirements pursuant to subdivision (2)(c) of section 68-910.

Source: R.S.1866, c. 40, § 4, p. 275; Laws 1875, § 1, p. 89; R.S.1913, § 5798; Laws 1915, c. 20, § 1, p. 80; Laws 1919, c. 128, § 1, p.

302; C.S.1922, § 5143; C.S.1929, § 68-104; Laws 1937, c. 150, § 1, p. 574; C.S.Supp.,1941, § 68-104; R.S.1943, § 68-104; Laws 1947, c. 218, § 1, p. 705; Laws 1982, LB 522, § 20; Laws 1982, LB 602, § 1; Laws 1983, LB 604, § 19; Laws 1984, LB 886, § 1; Laws 1995, LB 455, § 3; Laws 1996, LB 1044, § 285; Laws 2006, LB 1248, § 67; Laws 2007, LB292, § 1.

Cross References

For powers of health district in counties over 200,000 population, see section 71-1623.

General assistance, see sections 68-131 to 68-148.

Health services, maximum payments and standards established, see section 68-126.

Township counties, county board has charge of care of the poor, see section 23-248.

1. Medical services 2. Miscellaneous

1. Medical services

A county may be liable for the reasonable value of necessary hospital services furnished to poor persons when the county board, after receiving notice of the situation, neglects or refuses to make any arrangements for the care of the person. *Creighton-Omaha Regional Health Care Corp. v. Douglas County*, 202 Neb. 686, 277 N.W.2d 64 (1979).

A hospital which furnishes hospital services to a poor person without a prior authorization by the county board acts at its peril with respect to reimbursement from county funds. *Creighton-Omaha Regional Health Care Corp. v. Douglas County*, 202 Neb. 686, 277 N.W.2d 64 (1979).

County board by statute has been made overseer of the poor and the county board has mandatory duty to provide for poor persons whether or not they are residents of the county. *Creighton-Omaha Regional Health Care Corp. v. Douglas County*, 202 Neb. 686, 277 N.W.2d 64 (1979).

County is not liable for hospital expense unless authorized by county board even though emergency existed. *Mary Lanning Memorial Hospital v. Clay County*, 170 Neb. 61, 101 N.W.2d 510 (1960).

Physician must ascertain at his peril the power of county officers to bind the county for payment of his services by county in treating poor persons. *Neill v. Dakota County*, 140 Neb. 26, 299 N.W. 294 (1941).

The county board of each county is vested with entire and exclusive superintendence of the poor, with authority to employ a county physician. *Miller v. Banner County*, 135 Neb. 549, 283 N.W. 206 (1939).

It is the duty of a county board to provide the necessary medical services for a pauper patient within own county. *Burnham v. Lincoln County*, 128 Neb. 47, 257 N.W. 491 (1934).

A physician not hired by county may not recover for emergency services to a poor person where there is a duly appointed county physician to care for poor, ready, willing and able to serve but not consulted. *Sayre v. Madison County*, 127 Neb. 200, 254 N.W. 874 (1934).

A contract by a county board to pay a specified sum to one who will undertake to provide all medical services for the poor within the county is invalid. *Hustead v. Richardson County*, 104 Neb. 27, 175 N.W. 648 (1919).

Physician who is paid for treating inmates of county poor farm and county jail may recover from county for services and expenses and quarantining and suppressing epidemic. *Plumb v. York County*, 95 Neb. 655, 146 N.W. 938 (1914).

County board may either employ a physician by the year to furnish medical services to paupers, or it may employ a physician to attend each case as it arises. *Red Willow County v. Davis*, 49 Neb. 796, 69 N.W. 138 (1896).

County is not liable for medical attendance rendered to non-resident pauper without order from board. *Hamilton County v. Meyers*, 23 Neb. 718, 37 N.W. 623 (1888).

If county physician refuses to attend, county is liable to other physicians employed. *Gage County v. Fulton*, 16 Neb. 5, 19 N.W. 781 (1884).

2. Miscellaneous

Duty of county board to support poor is subject to limitation upon the expenditures of the county. *State ex rel. Boxberger v. Burns*, 132 Neb. 31, 270 N.W. 656 (1937).

In counties under township organization in which a poor-house has not been established, burden of supporting poor in respective townships devolves upon such townships. *Custer Township v. Board of Supervisors of Antelope County*, 103 Neb. 128, 170 N.W. 600 (1919).

68-105 Repealed. Laws 1983, LB 604, § 32.

68-106 Repealed. Laws 1982, LB 522, § 46.

68-107 Repealed. Laws 1982, LB 522, § 46.

68-108 Repealed. Laws 1982, LB 522, § 46.

68-109 Repealed. Laws 1983, LB 604, § 32.

68-110 Repealed. Laws 1983, LB 604, § 32.

68-111 Repealed. Laws 1982, LB 522, § 46.

68-112 Repealed. Laws 1982, LB 522, § 46.

68-113 Repealed. Laws 1982, LB 522, § 46.**68-114 Nonresident poor persons; temporary aid; relief when legal residence not determined.**

Whenever any nonresident shall fall sick in any county in this state, not having money or property to pay his or her board, or whenever any poor person not having a legal settlement in the county is found in distress, without friends or money, so that he or she is likely to suffer, it shall be the duty of the county board to furnish such temporary assistance to such person as it shall deem necessary; and if any such person shall die, the county board shall provide all necessary means for a decent burial of such person. If such poor person, applying for or receiving relief, belongs to another state, the county board may furnish such person, in addition to necessary temporary aid, transportation and the requisite expenses incurred thereby, and may return such poor person to the state in which he or she has legal settlement; *Provided*, that the claim by the poor person of a legal settlement shall be verified by the county board, and assurance be given the board that such poor person will be received and given care in the place of his or her legal settlement. If any such poor person shall be found applying for relief in any county, and the county board of such county shall be unable to ascertain and establish the last place of legal residence of such person, the county board shall proceed in its discretion to provide for such poor person in the same manner as other poor persons are directed to be provided for.

Source: R.S.1866, c. 40, § 14, p. 277; R.S.1913, § 5808; Laws 1915, c. 20, § 1, p. 81; C.S.1922, § 5153; C.S.1929, § 68-114; Laws 1933, c. 118, § 8, p. 482; C.S.Supp.,1941, § 68-114; R.S.1943, § 68-114; Laws 1982, LB 602, § 2.

Cross References

For powers of health district in counties over 200,000 population, see section 71-1623.

A county may be liable for the reasonable value of necessary hospital services furnished to poor persons when the county board, after receiving notice of the situation, neglects or refuses to make any arrangements for the care of the person. *Creighton-Omaha Regional Health Care Corp. v. Douglas County*, 202 Neb. 686, 277 N.W.2d 64 (1979).

A hospital which furnishes hospital services to a poor person without a prior authorization by the county board acts at its peril with respect to reimbursement from county funds. *Creighton-Omaha Regional Health Care Corp. v. Douglas County*, 202 Neb. 686, 277 N.W.2d 64 (1979).

County board by statute has been made overseer of the poor and the county board has mandatory duty to provide for poor persons whether or not they are residents of the county. *Creighton-Omaha Regional Health Care Corp. v. Douglas County*, 202 Neb. 686, 277 N.W.2d 64 (1979).

Approval of county board is required to impose liability for hospital services furnished to a nonresident. *Mary Lanning Memorial Hospital v. Clay County*, 170 Neb. 61, 101 N.W.2d 510 (1960).

Where there is a duly appointed county physician to care for the poor, a physician, not hired by the county, cannot recover for services rendered to a nonresident poor person in an emergency. *Sayre v. Madison County*, 127 Neb. 200, 254 N.W. 874 (1934).

Duty of overseer of poor in precinct where such person shall be, is to furnish such assistance as he shall deem necessary, medical, or otherwise. *Meyers v. Furnas County*, 93 Neb. 313, 140 N.W. 633 (1913).

A poor person becoming disabled in a county other than his residence is entitled to relief from county in which found, which county has right of reimbursement from county of pauper's residence. *Rock County v. Holt County*, 78 Neb. 616, 111 N.W. 366 (1907).

A township is not liable for medical services rendered to a nonresident pauper. *Gilligan v. Town of Grattan*, 63 Neb. 242, 88 N.W. 477 (1901).

County is not liable for voluntary medical attendance to nonresident pauper. *Hamilton County v. Meyers*, 23 Neb. 718, 37 N.W. 623 (1888).

68-115 Legal settlement, defined; exclusions; minors; termination.

(1) The term legal settlement for all public assistance programs shall be taken and considered to mean as follows:

Every person, except those hereinafter mentioned, who has resided one year continuously in any county, shall be deemed to have a legal settlement in such county.

Every person who has resided one year continuously within the state, but not in any one county shall have a legal settlement in the county in which he or she has resided six months continuously.

(2) The time during which a person has been an inmate of any public or private charitable or penal institution, or has received care at public expense in any type of care home, nursing home, or board and room facility licensed as such and caring for more than one patient or guest, and each month during which he or she has received relief from private charity or the poor fund of any county shall be excluded in determining the time of residence hereunder, as referred to in subsection (1) of this section.

(3) Every minor who is not emancipated and settled in his or her own right shall have the same legal settlement as the parent with whom he or she has resided.

(4) A legal settlement in this state shall be terminated and lost by (a) acquiring a new one in another state or by (b) voluntary and uninterrupted absence from this state for the period of one year with intent to abandon residence in Nebraska.

Source: R.S.1866, c. 40, § 15, p. 277; R.S.1913, § 5809; C.S.1922, § 5154; C.S.1929, § 68-115; Laws 1933, c. 118, § 9, p. 483; C.S.Supp.,1941, § 68-115; R.S.1943, § 68-115; Laws 1953, c. 229, § 1, p. 800; Laws 1961, c. 327, § 1, p. 1034; Laws 1975, LB 165, § 1; Laws 1982, LB 522, § 24; Laws 1982, LB 602, § 3; Laws 1983, LB 604, § 20.

The county where pauper has legal settlement is the county of ultimate liability for his maintenance and care. *Miller v. Banner County*, 135 Neb. 549, 283 N.W. 206 (1939).

Absence of unemancipated minor child from home of parents does not affect his settlement. *Miller v. Banner County*, 127

Neb. 690, 256 N.W. 639 (1934), affirming 127 Neb. 1, 254 N.W. 669 (1934).

One's residence is where he has his established home and to which, when absent, he intends to return. *State ex rel. Vale v. School Dist. of City of Superior*, 55 Neb. 317, 75 N.W. 855 (1898).

68-116 Repealed. Laws 1982, LB 522, § 46.

68-117 Repealed. Laws 1951, c. 212, § 1.

68-118 Repealed. Laws 1951, c. 212, § 1.

68-119 Repealed. Laws 1951, c. 212, § 1.

68-120 Repealed. Laws 1951, c. 212, § 1.

68-121 Repealed. Laws 1951, c. 212, § 1.

68-122 Repealed. Laws 1951, c. 212, § 1.

68-123 Repealed. Laws 1951, c. 212, § 1.

68-124 Repealed. Laws 1951, c. 212, § 1.

68-125 Repealed. Laws 1951, c. 212, § 1.

68-126 Health services; maximum payments; rules and regulations; standard of need for medical services; established.

The Department of Health and Human Services shall adopt and promulgate rules and regulations establishing maximum payments for all health services furnished to recipients of public assistance. Each county shall, not later than

December 31, 1984, establish a standard of need for medical services furnished, pursuant to section 68-104, by the counties to indigent persons who are not eligible for other medical assistance programs. This standard shall not exceed the Office of Management and Budget income poverty guidelines.

Source: Laws 1963, c. 384, § 1, p. 1229; Laws 1982, LB 522, § 25; Laws 1982, LB 602, § 4; Laws 1984, LB 886, § 2; Laws 1996, LB 1044, § 286; Laws 2007, LB296, § 236.

68-127 Repealed. Laws 1984, LB 904, § 11.

68-128 Emergency assistance; families with children.

From such funds as may be appropriated for such purpose, the Department of Health and Human Services shall provide emergency assistance benefits on behalf of families who have children.

Source: Laws 1973, LB 477, § 1; Laws 1989, LB 362, § 4; Laws 1996, LB 1044, § 287.

68-129 Public assistance; computation of available resources; exclusions.

The Department of Health and Human Services shall, by rule and regulation, when determining need for public assistance on the basis of available resources, exclude from the definition of available resources of an applicant for assistance either the funds deposited in an irrevocable trust fund created pursuant to section 12-1106 or up to four thousand dollars, increased annually as provided in this section, of the amount paid for a policy of insurance the proceeds of which are specifically and irrevocably designated, assigned, or pledged for the payment of the applicant's burial expenses. The Department of Health and Human Services shall increase such amount annually on September 1 beginning with the year 2006 by the percentage change in the Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics at the close of the twelve-month period ending on August 31 of such year. This section shall not preclude the eligibility for assistance of an applicant who has purchased such a policy of insurance prior to July 9, 1988, unless such applicant is subject to subdivision (3) of section 68-1002.

Source: Laws 1982, LB 314, § 1; Laws 1986, LB 643, § 22; Laws 1988, LB 1010, § 1; Laws 1996, LB 1044, § 288; Laws 2006, LB 85, § 2; Laws 2007, LB296, § 237.

68-130 Counties; maintain office and service facilities; review by department.

(1) Counties shall maintain, at no additional cost to the Department of Health and Human Services, office and service facilities used for the administration of the public assistance programs as such facilities existed on April 1, 1983.

(2) The county board of any county may request in writing that the department review office and service facilities provided by the county for the department to determine if the department is able to reduce or eliminate office and service facilities within the county. The department shall respond in writing to such request within thirty days after receiving the request. The final decision with respect to maintaining, reducing, or eliminating office and service facilities in such county shall be made by the department, and the county may

reduce or eliminate office and service facilities if authorized by such final decision.

Source: Laws 1982, LB 602, § 5; Laws 1983, LB 604, § 21; Laws 1996, LB 1044, § 289; Laws 2007, LB296, § 238; Laws 2011, LB234, § 1.

68-131 Poor person; support by county; when eligible.

When any poor person does not have a spouse, parent, or stepparent supporting him or her or is not eligible for other general assistance programs, the poor person shall receive such relief, referred to as general assistance for purposes of sections 68-131 to 68-148, out of the treasury of the county in which he or she has legal settlement at the time of applying for assistance, in the manner provided in sections 68-131 to 68-148. Any person who is or becomes ineligible for other general assistance programs due to his or her own actions or inactions shall also be ineligible for general assistance from the county.

Source: Laws 1983, LB 604, § 1; Laws 1995, LB 455, § 4.

68-132 County board; duties.

The county board of each county shall be the overseer of the poor and shall be vested with the superintendence of the poor in such county. It shall be the duty of the county board to provide general assistance to all poor persons (1) who meet the requirements contained in section 68-131 and who are eligible for general assistance pursuant to standards established by the county board as required by section 68-133 or (2) who are eligible for and participate in a program established pursuant to section 68-152. Such general assistance shall be in amounts established by the county board as required by section 68-133 and shall be adequate to insure maintenance of minimum health and decency.

Source: Laws 1983, LB 604, § 2; Laws 1990, LB 422, § 6.

68-133 County; adopt standards; requirements.

Each county shall, not later than July 1, 1984, adopt written standards of eligibility and assistance for general assistance to poor persons. Such standards shall:

(1) Provide that all individuals desiring to make application for general assistance shall have opportunity to do so and that general assistance shall be furnished to all eligible individuals:

(a) Within seven days after the submission of the application if the need is short-term; and

(b) Within thirty days after the submission of the application if the need is continuous;

(2) Provide a schedule of goods and services necessary for the maintenance of minimum decency and health for families of various sizes, including single persons. Such schedule shall include, but not be limited to, food, housing, utilities, clothing, medical expenses, burial expenses, laundry, transportation, housing supplies, personal care, and such other goods and services as the county board shall deem necessary to insure the maintenance of minimum health and decency;

- (3) Provide a schedule setting forth the amount of money needed to obtain those goods and services referred to in subdivision (2) of this section;
- (4) Provide a schedule setting forth the amount of money to be paid to families and individuals who are in need of those goods and services when:
- (a) That need is continuous; and
 - (b) That need is short-term;
- (5) Provide a schedule of the income and assets which shall be considered as being available to a family or individual and which shall guarantee that only such income and assets as are in the immediate possession and control of the family or person shall be considered as available;
- (6) Include a definition of poor persons which will insure that all families and individuals whose available income and assets, as set forth pursuant to subdivision (5) of this section, are less than those determined to be necessary pursuant to subdivisions (2) and (3) of this section will be eligible to receive general assistance; and
- (7) Designate whether the county board or a class of employees in the county shall hold and conduct the hearings of aggrieved persons as required by sections 68-139 to 68-141.

Source: Laws 1983, LB 604, § 3.

The Nebraska general assistance statutes obligate each county to provide to all income-eligible persons, whether or not they are residents of that county, the minimum level of care which the county has undertaken pursuant to subsection (2) of this section. *Salts v. Lancaster Cty.*, 269 Neb. 948, 697 N.W.2d 289 (2005).

68-134 Standards; review; filing; availability.

The standards established pursuant to section 68-133 and all amendments to such standards shall be reviewed by the county on a biennial basis to insure that such standards reflect changes in living standards and costs-of-living. A copy of all standards and amendments to such standards shall be filed with the Department of Health and Human Services within thirty days after their adoption by the county. Upon request of a county board, the Department of Health and Human Services shall assist the board in developing standards or amendments. Each county shall make a copy of its standards and amendments available for public inspection during normal business hours.

Source: Laws 1983, LB 604, § 4; Laws 1996, LB 1044, § 290.

68-135 Standards; hearing and notice.

No county shall adopt standards or amendments to such standards pursuant to section 68-133 or 68-134 without first holding a public hearing to permit discussion and the presentation of testimony or evidence by interested persons. Notice of such hearing shall be published not more than twenty days nor less than ten days prior to the hearing in a newspaper in general circulation throughout the county.

Source: Laws 1983, LB 604, § 5.

68-136 Failure to adopt or review standards; judicial review.

A county board's failure to adopt standards or to review standards as required by sections 68-131 to 68-148 may be reviewed by the district court of the county in an action in mandamus.

Source: Laws 1983, LB 604, § 6.

68-137 Repayment; when required.

No county shall require a person to make repayment or any other form of compensation for general assistance provided to such person pursuant to sections 68-131 to 68-148 if such general assistance was not obtained through misrepresentation or fraud, except that a county may require reimbursement for interim general assistance granted pending a determination of an applicant's eligibility for any supplemental security income program or other program of categorical assistance or pending the issuance of a lost or stolen categorical warrant.

Source: Laws 1983, LB 604, § 7; Laws 1984, LB 886, § 3.

68-138 Assistance; denial; termination; reduction; notice; hearing.

Any person whose application for assistance, made pursuant to section 68-104 or sections 68-131 to 68-148, is denied or whose continuing assistance is terminated or reduced shall, at the time of the denial, termination, or reduction, be given a written notice of the specific reasons for such denial, termination, or reduction. Such notice shall also inform the person of the right to a hearing to review the denial, termination, or reduction and the procedures for requesting such hearing.

Source: Laws 1983, LB 604, § 8; Laws 1984, LB 886, § 4.

68-139 Hearing before county board or hearing examiner; when allowed.

Any person whose claim for general assistance or medical services (1) has not been acted upon within the time established by section 68-133, (2) has been denied, (3) has not been granted in full, (4) has been reduced or terminated, or (5) has been suspended for failure to participate in a program established pursuant to section 68-152 may request a hearing on such action or inaction before the county board or, if the county board so delegates as allowed by section 68-133, before an employee of the county.

Source: Laws 1983, LB 604, § 9; Laws 1984, LB 886, § 5; Laws 1990, LB 422, § 7.

68-140 Hearing; rights of person requesting.

A person requesting a hearing pursuant to section 68-139 shall have the following rights:

- (1) To examine the county file pertaining to his or her case prior to and during the hearing;
- (2) To be represented in the proceedings by a lawyer, friend, relative, or anyone else he or she may select;
- (3) To present evidence; and
- (4) To confront and cross-examine witnesses.

Source: Laws 1983, LB 604, § 10; Laws 1984, LB 886, § 6.

68-141 Hearing; procedure.

The county board or hearing examiner, as the case may be, shall use the following procedure for all hearings:

- (1) Tape-record the hearing;

- (2) Make a decision within thirty days following the hearing;
- (3) Make the decision based upon the evidence adduced and the law;
- (4) Provide the claimant a written copy of the decision setting forth findings and conclusions; and
- (5) Preserve the tape of the hearing and all exhibits offered at the hearing for not less than sixty days following entry of the hearing decision.

Source: Laws 1983, LB 604, § 11.

68-142 Judicial review; procedure.

- (1) Any person aggrieved by a decision rendered pursuant to sections 68-139 to 68-141 may obtain a review of such decision in the district court of the county.
- (2) Proceedings for review shall be instituted by filing a petition in the district court of the county where the decision was rendered within thirty days after service of the decision on the claimant. The county shall be made a party to the proceedings for review and summons shall be served as in other actions against a county. The court may permit other interested parties to intervene.
- (3) Within fifteen days after service of summons upon the county or within such further time as the court for good cause shown may allow, the county shall prepare and transmit to the court a certified transcript of the proceedings had before it, which transcript shall include the county's standards and all amendments regarding eligibility and assistance for general assistance, the transcribed hearing record, all exhibits offered at the hearing, and the final decision sought to be reversed, vacated, or modified.
- (4) The review shall be conducted by the court without a jury on the record of the county.
- (5) The court may affirm the decision, remand the case for further proceedings, or reverse or modify the decision if any substantial rights of the petitioner may have been prejudiced because the decision is:
 - (a) In violation of constitutional provisions;
 - (b) In excess of the statutory authority or jurisdiction of the county;
 - (c) Made upon unlawful procedure;
 - (d) Unsupported by competent, material, and substantial evidence in view of the entire record as made on review; or
 - (e) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

Source: Laws 1983, LB 604, § 12.

68-143 Poor person; where chargeable.

Any person becoming chargeable as a poor person in this state shall be chargeable as such in the county in which he or she has established a legal settlement as defined in section 68-115.

Source: Laws 1983, LB 604, § 13.

68-144 Poor person; duties of county where found and county of legal settlement.

If any person shall become chargeable in any county in which he or she has not established a legal settlement at the time of applying for aid, he or she shall be duly taken care of by the proper authority of the county where he or she may be found. It shall be the duty of the clerk of the county board to send a notice by mail to the clerk of the county board of the county in which such poor person has a legal settlement that such person has become chargeable as a poor person, and requesting the authorities of such county to promptly remove such poor person and to pay the expense accrued in taking care of him or her.

Source: Laws 1983, LB 604, § 14.

68-145 Poor person; county where found; action to recover costs; when authorized.

If a poor person, by reason of sickness or disease, or by neglect of the authorities of the county in which he or she has a legal settlement, or for any other sufficient cause, cannot be removed, then the county taking charge of such individual may sue for, and recover from the county to which such individual belongs, the amount expended for and in behalf of such poor person and in taking care of such person.

Source: Laws 1983, LB 604, § 15.

68-146 Nonresident poor person; general assistance; legal settlement verified; assurances.

Whenever any poor person without a legal settlement in this state shall become sick in any county in this state, not having income and assets available to pay for medical services, or whenever any poor person without a legal settlement in this state is found in distress in any county in this state and is without income and assets to preclude suffering, it shall be the duty of the county board to furnish such temporary assistance to such person as it shall deem necessary. If any such person shall die, the county board shall provide all necessary means for a decent burial of such person. If such poor person has a legal settlement in another state, the county board may furnish such person, in addition to temporary assistance, transportation and the requisite expenses incurred thereby and may return such poor person to the state in which he or she has legal settlement. The representation by a poor person of a legal settlement shall be verified by the county board and assurance shall be given the board that such poor person will be received and given care in the place of his or her legal settlement. If any poor person without a legal settlement in this state shall apply for general assistance in any county in which he or she is situated, the county board may proceed at its discretion to provide for such poor person in the same manner as it would provide for a poor person with legal settlement in the county.

Source: Laws 1983, LB 604, § 16.

68-147 County, when liable.

Even though a poor person may be eligible for general assistance, the county board shall have no liability to such person until the county board or the person to whom it has delegated responsibility for administration of general assistance shall have passed upon a written application for assistance or shall have failed to act upon the written application within the appropriate time prescribed in section 68-133. If a poor person is incapable, for any cause, of completing a

written application for assistance, it may be completed by another acting in the interest of such poor person.

Source: Laws 1983, LB 604, § 17.

68-148 General assistance; not alienable; exception.

No general assistance shall be alienable by assignment or transfer, or be subject to attachment, garnishment, or any other legal process, except that a county may pay general assistance directly to any person, corporation, or other legal entity providing goods or services, as described in section 68-133, to the poor person.

Source: Laws 1983, LB 604, § 18.

68-149 Reimbursement to county; when; procedure.

The county shall be reimbursed for any medical assistance or health services by the spouse, father, or mother of any recipient if they or any of them are of sufficient ability. A proceeding may be instituted in any court of competent jurisdiction in this state against such relative for reimbursement of medical care or health services made to or on behalf of a recipient at any time prior to the expiration of one year after the date of the last assistance payment. Suit shall be instituted in the name of the county.

Source: Laws 1984, LB 886, § 7.

68-150 Application; right of subrogation.

An application for county general assistance or for county health services shall give a right of subrogation to the county furnishing such aid. Subject to sections 68-921 to 68-925, subrogation shall include every claim or right which the applicant may have against a third party when such right or claim involves money for medical care. The third party shall be liable to make payments directly to the county as soon as he or she is notified in writing of the valid claim for subrogation under this section.

Source: Laws 1984, LB 886, § 8; Laws 1988, LB 419, § 12; Laws 1989, LB 362, § 5; Laws 2006, LB 1248, § 68.

68-151 Employable recipients; legislative findings.

The Legislature hereby finds and declares that the increase in the number of recipients of county general assistance funds by employable recipients is a cause of great concern among county governments. County officials realize that a part of the recent increase in recipients was caused by the recent economic recession, especially in the rural areas of the state. Recognizing such increase and some of its causes, county officials wish to establish a program designed to encourage employable recipients to enroll in county-approved vocational, rehabilitation, or job training programs or to require employable recipients to perform community service in exchange for county general assistance. The establishment of such a program will result in more persons leading productive lives, less unemployment, and savings for the taxpayers of the state.

Source: Laws 1990, LB 422, § 1; Laws 1991, LB 227, § 1.

68-152 Employable recipients; programs authorized.

A county may develop, establish, and implement vocational, rehabilitation, job training, and community service programs for employable recipients.

Source: Laws 1990, LB 422, § 2; Laws 1991, LB 227, § 2.

68-153 Employable recipients; terms, defined.

For purposes of sections 68-151 to 68-155:

(1) Community service shall mean labor performed for a governmental agency, nonprofit corporation, or health care corporation;

(2) Employable recipient shall mean any individual who is eighteen years of age or older, who is receiving county general assistance pursuant to sections 68-131 to 68-148, who is not engaged in full-time employment or satisfactorily participating in a county-approved vocational, rehabilitation, job training, or community service program, and who is not rendered unable to work by illness or significant and substantial mental or physical incapacitation to the degree and of the duration that the illness or incapacitation prevents the person from performing designated vocational, rehabilitation, job training, or community service activities;

(3) Full-time employment shall mean being employed at least twenty-five hours per week and receiving wages, tips, and other compensation which meet the applicable federal minimum wage requirements; and

(4) Job training program shall mean vocational training in technical job skills and equivalent knowledge.

Source: Laws 1990, LB 422, § 3; Laws 1991, LB 227, § 3; Laws 2013, LB156, § 1.

68-154 Employable recipients; rules and regulations.

Any county which establishes a vocational, rehabilitation, job training, or community service program shall adopt and promulgate written rules and regulations to ensure fair and equitable treatment of employable recipients of general assistance.

Source: Laws 1990, LB 422, § 4; Laws 1991, LB 227, § 4.

68-154.01 Employable recipient; community service required; exception.

(1) Any individual applying for general assistance who has completed a county-approved vocational, rehabilitation, or job training program within two years prior to the date of such application or who refuses or fails to participate in such a program may be required to participate in a county-approved community service program. Any employable recipient who has completed such a vocational, rehabilitation, or job training program and continues to be unemployed for a period of three calendar months from the date of completing such program may be required to participate in such a community service program.

(2) No individual who is a single parent and has legal custody of his or her child under six years of age shall be required to perform community service. No individual shall be required to participate in a county-approved community service program unless he or she has first been given the opportunity to participate in a county-approved vocational, rehabilitation, or job training program.

(3) The maximum number of hours of community service required of each employable recipient shall be determined by dividing the amount of his or her general assistance received in the calendar month by the federal minimum hourly wage. No individual shall be required to perform community service for more than eight hours in any one day or more than sixteen hours in one week.

(4) No individual required to perform community service pursuant to this section shall be denied general assistance for failure to participate in a county-approved community service program through no fault of his or her own.

Source: Laws 1991, LB 227, § 5.

68-154.02 Employable recipient; community service; costs; paid by county.

The cost of transportation of participants to community service projects, supervision, and necessary equipment shall be paid by the county.

Source: Laws 1991, LB 227, § 6.

68-154.03 Employable recipient; community service; participation; how construed.

Participation in a county-approved community service program shall not be construed as employment for purposes of Chapter 48. No employable recipient participating in such a community service program shall be deemed an employee of the county for purposes of the County Employees Retirement Act or for any other purpose.

Source: Laws 1991, LB 227, § 7.

Cross References

County Employees Retirement Act, see section 23-2331.

68-155 Employable recipients; ineligible; when; notice; appeal.

Any employable recipient who fails or refuses to participate in a county-approved vocational, rehabilitation, job training, or community service program shall be ineligible for continued general assistance for a period of three calendar months, except that any employable recipient denied general assistance pursuant to this section shall receive written notice of his or her ineligibility and shall have thirty days from the date of receipt of the written notice to appeal such decision. All such appeals shall be governed by sections 68-139 to 68-142.

Source: Laws 1990, LB 422, § 5; Laws 1991, LB 227, § 8.

68-156 Repealed. Laws 2013, LB 156, § 3.

68-157 Repealed. Laws 1996, LB 1155, § 121.

68-158 Program to provide amino acid-based elemental formulas; Department of Health and Human Services; duties; report.

The Department of Health and Human Services shall establish a program to provide amino acid-based elemental formulas for the diagnosis and treatment of Immunoglobulin E and non-Immunoglobulin E mediated allergies to multiple food proteins, food-protein-induced enterocolitis syndrome, eosinophilic disorders, and impaired absorption of nutrients caused by disorders affecting the absorptive surface, functional length, and motility of the gastrointestinal

tract, when the ordering physician has issued a written order stating that the amino acid-based elemental formula is medically necessary for the treatment of a disease or disorder. Up to fifty percent of the actual out-of-pocket cost, not to exceed twelve thousand dollars, for amino acid-based elemental formulas shall be available to an individual without fees each twelve-month period. The department shall distribute funds on a first-come, first-served basis. Nothing in this section is deemed to be an entitlement. The maximum total General Fund expenditures per year for amino acid-based elemental formulas shall not exceed two hundred fifty thousand dollars each fiscal year in FY2014-15 and FY2015-16. The Department of Health and Human Services shall provide an electronic report on the program to the Legislature annually on or before December 15 of each year.

Source: Laws 2014, LB254, § 3.

ARTICLE 2

OLD AGE ASSISTANCE

Section	
68-201.	Repealed. Laws 1953, c. 237, § 11.
68-202.	Repealed. Laws 1965, c. 395, § 27.
68-203.	Repealed. Laws 1965, c. 395, § 27.
68-204.	Repealed. Laws 1965, c. 395, § 27.
68-205.	Repealed. Laws 1965, c. 395, § 27.
68-206.	Repealed. Laws 1965, c. 395, § 27.
68-206.01.	Repealed. Laws 1963, c. 340, § 1.
68-206.02.	Repealed. Laws 1965, c. 395, § 27.
68-207.	Repealed. Laws 1961, c. 328, § 1.
68-208.	Repealed. Laws 1965, c. 395, § 27.
68-209.	Repealed. Laws 1965, c. 395, § 27.
68-210.	Repealed. Laws 1965, c. 395, § 27.
68-211.	Repealed. Laws 1965, c. 395, § 27.
68-212.	Repealed. Laws 1965, c. 395, § 27.
68-213.	Repealed. Laws 1965, c. 395, § 27.
68-214.	Repealed. Laws 1996, LB 1155, § 121.
68-215.	Repealed. Laws 1971, LB 130, § 2.
68-215.01.	Repealed. Laws 1971, LB 130, § 2.
68-215.02.	Repealed. Laws 1971, LB 130, § 2.
68-215.03.	Repealed. Laws 1971, LB 130, § 2.
68-215.04.	Repealed. Laws 1965, c. 395, § 27.
68-215.05.	Repealed. Laws 1971, LB 130, § 2.
68-215.06.	Repealed. Laws 1971, LB 130, § 2.
68-215.07.	Repealed. Laws 1971, LB 130, § 2.
68-215.08.	Repealed. Laws 1971, LB 130, § 2.
68-215.09.	Repealed. Laws 1965, c. 395, § 27.
68-215.10.	Repealed. Laws 1971, LB 130, § 2.
68-215.11.	Repealed. Laws 1971, LB 130, § 2.
68-215.12.	Repealed. Laws 1971, LB 130, § 2.
68-215.13.	Repealed. Laws 1971, LB 130, § 2.
68-215.14.	Repealed. Laws 1987, LB 3, § 3.
68-216.	Transferred to section 68-1001.02.
68-217.	Repealed. Laws 1965, c. 395, § 27.
68-218.	Repealed. Laws 1982, LB 522, § 46.
68-219.	Repealed. Laws 1965, c. 395, § 27.
68-220.	Repealed. Laws 1965, c. 395, § 27.
68-221.	Repealed. Laws 1965, c. 395, § 27.
68-222.	Repealed. Laws 1965, c. 395, § 27.
68-223.	Repealed. Laws 1965, c. 395, § 27.
68-224.	Repealed. Laws 1965, c. 395, § 27.

Section	
68-225.	Repealed. Laws 1965, c. 395, § 27.
68-226.	Repealed. Laws 1965, c. 395, § 27.
68-227.	Repealed. Laws 1965, c. 395, § 27.
68-228.	Repealed. Laws 1965, c. 395, § 27.
68-229.	Repealed. Laws 1965, c. 395, § 27.
68-230.	Repealed. Laws 1959, c. 372, § 2.

- 68-201 Repealed. Laws 1953, c. 237, § 11.**
- 68-202 Repealed. Laws 1965, c. 395, § 27.**
- 68-203 Repealed. Laws 1965, c. 395, § 27.**
- 68-204 Repealed. Laws 1965, c. 395, § 27.**
- 68-205 Repealed. Laws 1965, c. 395, § 27.**
- 68-206 Repealed. Laws 1965, c. 395, § 27.**
- 68-206.01 Repealed. Laws 1963, c. 340, § 1.**
- 68-206.02 Repealed. Laws 1965, c. 395, § 27.**
- 68-207 Repealed. Laws 1961, c. 328, § 1.**
- 68-208 Repealed. Laws 1965, c. 395, § 27.**
- 68-209 Repealed. Laws 1965, c. 395, § 27.**
- 68-210 Repealed. Laws 1965, c. 395, § 27.**
- 68-211 Repealed. Laws 1965, c. 395, § 27.**
- 68-212 Repealed. Laws 1965, c. 395, § 27.**
- 68-213 Repealed. Laws 1965, c. 395, § 27.**
- 68-214 Repealed. Laws 1996, LB 1155, § 121.**
- 68-215 Repealed. Laws 1971, LB 130, § 2.**
- 68-215.01 Repealed. Laws 1971, LB 130, § 2.**
- 68-215.02 Repealed. Laws 1971, LB 130, § 2.**
- 68-215.03 Repealed. Laws 1971, LB 130, § 2.**
- 68-215.04 Repealed. Laws 1965, c. 395, § 27.**
- 68-215.05 Repealed. Laws 1971, LB 130, § 2.**
- 68-215.06 Repealed. Laws 1971, LB 130, § 2.**
- 68-215.07 Repealed. Laws 1971, LB 130, § 2.**
- 68-215.08 Repealed. Laws 1971, LB 130, § 2.**
- 68-215.09 Repealed. Laws 1965, c. 395, § 27.**
- 68-215.10 Repealed. Laws 1971, LB 130, § 2.**

68-215.11 Repealed. Laws 1971, LB 130, § 2.

68-215.12 Repealed. Laws 1971, LB 130, § 2.

68-215.13 Repealed. Laws 1971, LB 130, § 2.

68-215.14 Repealed. Laws 1987, LB 3, § 3.

68-216 Transferred to section 68-1001.02.

68-217 Repealed. Laws 1965, c. 395, § 27.

68-218 Repealed. Laws 1982, LB 522, § 46.

68-219 Repealed. Laws 1965, c. 395, § 27.

68-220 Repealed. Laws 1965, c. 395, § 27.

68-221 Repealed. Laws 1965, c. 395, § 27.

68-222 Repealed. Laws 1965, c. 395, § 27.

68-223 Repealed. Laws 1965, c. 395, § 27.

68-224 Repealed. Laws 1965, c. 395, § 27.

68-225 Repealed. Laws 1965, c. 395, § 27.

68-226 Repealed. Laws 1965, c. 395, § 27.

68-227 Repealed. Laws 1965, c. 395, § 27.

68-228 Repealed. Laws 1965, c. 395, § 27.

68-229 Repealed. Laws 1965, c. 395, § 27.

68-230 Repealed. Laws 1959, c. 372, § 2.

ARTICLE 3

STATE ASSISTANCE FUND

Section

68-301. State Assistance Fund; created; investment.

68-302. Repealed. Laws 1965, c. 399, § 4.

68-303. Repealed. Laws 1953, c. 237, § 11.

68-304. Repealed. Laws 1953, c. 237, § 11.

68-305. Repealed. Laws 1953, c. 237, § 11.

68-306. Repealed. Laws 1953, c. 237, § 11.

68-307. Repealed. Laws 1965, c. 399, § 4.

68-308. Repealed. Laws 1965, c. 399, § 4.

68-309. Department of Health and Human Services; sole state agency for administration of welfare programs.

68-310. Repealed. Laws 1965, c. 399, § 4.

68-310.01. Repealed. Laws 1982, LB 522, § 46.

68-310.02. Repealed. Laws 1982, LB 522, § 46.

68-311. Repealed. Laws 1965, c. 399, § 4.

68-312. Department of Health and Human Services; rules and regulations; records and other communications; use by other agency or department.

68-313. Records and information; use and disclosure; limitations.

68-313.01. Records and information; access by the Legislature and state and county officials; open to public; limitation.

Section	
68-314.	Violations; penalty.
68-315.	Repealed. Laws 1965, c. 399, § 4.
68-316.	Repealed. Laws 1953, c. 237, § 11.
68-317.	Repealed. Laws 1965, c. 399, § 4.
68-318.	Repealed. Laws 1965, c. 399, § 4.
68-319.	Repealed. Laws 1965, c. 399, § 4.
68-320.	Repealed. Laws 1965, c. 399, § 4.
68-321.	Repealed. Laws 1965, c. 399, § 4.
68-322.	Repealed. Laws 1965, c. 399, § 4.
68-322.01.	Repealed. Laws 1977, LB 312, § 9.
68-323.	Repealed. Laws 1965, c. 399, § 4.
68-324.	Repealed. Laws 1953, c. 237, § 11.
68-325.	Repealed. Laws 1965, c. 399, § 4.
68-326.	Transferred to section 68-702.01.
68-327.	Repealed. Laws 1961, c. 415, § 38.
68-328.	Assistance; application; furnish with reasonable promptness.
68-329.	Repealed. Laws 1982, LB 522, § 46.

68-301 State Assistance Fund; created; investment.

A fund to be known as the State Assistance Fund is created and established in the treasury of the State of Nebraska. Such fund shall consist of all money appropriated to it by the Legislature, allocated by the government of the United States, or donated or allocated from other sources. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1935, Spec. Sess., c. 20, § 1, p. 134; Laws 1937, c. 188, § 1, p. 747; Laws 1939, c. 121, § 1, p. 509; Laws 1941, c. 174, § 1, p. 682; C.S.Supp., 1941, § 68-317; R.S. 1943, § 68-301; Laws 1947, c. 144, § 15, p. 400; Laws 1959, c. 311, § 1, p. 1151; Laws 1965, c. 399, § 1, p. 1280; Laws 1969, c. 584, § 63, p. 2384; Laws 1995, LB 7, § 65.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

This section provided for allocation of certain taxes and funds to the State Assistance Fund, and was not intended as a continuing appropriation. *Rein v. Johnson*, 149 Neb. 67, 30 N.W.2d 548 (1947).

68-302 Repealed. Laws 1965, c. 399, § 4.

68-303 Repealed. Laws 1953, c. 237, § 11.

68-304 Repealed. Laws 1953, c. 237, § 11.

68-305 Repealed. Laws 1953, c. 237, § 11.

68-306 Repealed. Laws 1953, c. 237, § 11.

68-307 Repealed. Laws 1965, c. 399, § 4.

68-308 Repealed. Laws 1965, c. 399, § 4.

68-309 Department of Health and Human Services; sole state agency for administration of welfare programs.

The Department of Health and Human Services shall be the sole agency of the State of Nebraska to administer the State Assistance Fund for assistance to the aged, blind, or disabled, aid to dependent children, medical assistance, medically handicapped children's services, child welfare services, and such other assistance and services as may be made available to the State of Nebraska by the government of the United States.

Source: Laws 1935, Spec. Sess., c. 20, § 7, p. 136; C.S.Supp.,1941, § 68-323; R.S.1943, § 68-309; Laws 1951, c. 216, § 1, p. 780; Laws 1963, c. 388, § 2, p. 1238; Laws 1965, c. 399, § 2, p. 1280; Laws 1982, LB 522, § 28; Laws 1985, LB 249, § 2; Laws 1996, LB 1044, § 294; Laws 2007, LB296, § 239.

68-310 Repealed. Laws 1965, c. 399, § 4.

68-310.01 Repealed. Laws 1982, LB 522, § 46.

68-310.02 Repealed. Laws 1982, LB 522, § 46.

68-311 Repealed. Laws 1965, c. 399, § 4.

68-312 Department of Health and Human Services; rules and regulations; records and other communications; use by other agency or department.

The Department of Health and Human Services has the power to establish and enforce reasonable rules and regulations governing the custody, use, and preservation of the records, papers, files, and communications of the state. The use of such records, papers, files, and communications by any other agency or department of government to which they may be furnished shall be limited to the purposes for which they are furnished.

Source: Laws 1941, c. 174, § 3, p. 684; C.S.Supp.,1941, § 68-340; R.S. 1943, § 68-312; Laws 1982, LB 522, § 29; Laws 1996, LB 1044, § 295; Laws 2007, LB296, § 240.

68-313 Records and information; use and disclosure; limitations.

It shall be unlawful, except as permitted by section 68-313.01 and except for purposes directly connected with the administration of general assistance, medically handicapped children's services, medical assistance, assistance to the aged, blind, or disabled, or aid to dependent children, and in accordance with the rules and regulations of the Department of Health and Human Services, for any person or persons to solicit, disclose, receive, make use of, authorize, knowingly permit, participate in, or acquiesce in the use of, any list of or names of, any information concerning, or persons applying for or receiving such aid or assistance, directly or indirectly derived from the records, papers, files, or communications of the state, or subdivisions or agencies thereof, or acquired in the course of the performance of official duties.

Source: Laws 1941, c. 174, § 3, p. 684; C.S.Supp.,1941, § 68-340; R.S. 1943, § 68-313; Laws 1953, c. 234, § 1(1), p. 813; Laws 1982, LB 522, § 30; Laws 1985, LB 249, § 3; Laws 1996, LB 1044, § 296; Laws 2007, LB296, § 241.

Read together, this section and section 68-313.01 prohibit the use of welfare-related information as evidence against a welfare applicant in a criminal trial not directly connected with the administration of general assistance. *State v. Owen*, 1 Neb. App. 1060, 510 N.W.2d 503 (1993).

68-313.01 Records and information; access by the Legislature and state and county officials; open to public; limitation.

Members of the Nebraska Legislature and all state and county officials of this state shall have free access at all times to all records and information in connection with the aid and assistance referred to in section 68-313. The public shall have free access to all information concerning lists of names and amounts of payments which appear on any financial records, except that no lists shall be used for commercial or political purposes.

Source: Laws 1941, c. 174, § 3, p. 684; C.S.Supp.,1941, § 68-340; R.S. 1943, § 68-313; Laws 1953, c. 234, § 1(1), p. 813; Laws 1982, LB 522, § 30; Laws 1983, LB 604, § 22.

Read together, section 68-313 and this section prohibit the use of welfare-related information as evidence against a welfare applicant in a criminal trial not directly connected with the administration of general assistance. State v. Owen, 1 Neb. App. 1060, 510 N.W.2d 503 (1993).

68-314 Violations; penalty.

Any person who knowingly violates the provisions of section 68-313 shall be deemed guilty of a Class III misdemeanor.

Source: Laws 1941, c. 174, § 3, p. 684; C.S.Supp.,1941, § 68-340; R.S. 1943, § 68-314; Laws 1977, LB 39, § 126.

68-315 Repealed. Laws 1965, c. 399, § 4.

68-316 Repealed. Laws 1953, c. 237, § 11.

68-317 Repealed. Laws 1965, c. 399, § 4.

68-318 Repealed. Laws 1965, c. 399, § 4.

68-319 Repealed. Laws 1965, c. 399, § 4.

68-320 Repealed. Laws 1965, c. 399, § 4.

68-321 Repealed. Laws 1965, c. 399, § 4.

68-322 Repealed. Laws 1965, c. 399, § 4.

68-322.01 Repealed. Laws 1977, LB 312, § 9.

68-323 Repealed. Laws 1965, c. 399, § 4.

68-324 Repealed. Laws 1953, c. 237, § 11.

68-325 Repealed. Laws 1965, c. 399, § 4.

68-326 Transferred to section 68-702.01.

68-327 Repealed. Laws 1961, c. 415, § 38.

68-328 Assistance; application; furnish with reasonable promptness.

All individuals desiring to make an application for any type of public assistance shall have an opportunity to do so, and public assistance shall be furnished with reasonable promptness to all eligible individuals.

Source: Laws 1951, c. 210, § 1, p. 772; Laws 1965, c. 399, § 3, p. 1281.

68-329 Repealed. Laws 1982, LB 522, § 46.

**ARTICLE 4
BLIND ASSISTANCE**

Section	
68-401.	Repealed. Laws 1953, c. 237, § 11.
68-402.	Repealed. Laws 1965, c. 395, § 27.
68-403.	Repealed. Laws 1965, c. 395, § 27.
68-404.	Repealed. Laws 1965, c. 395, § 27.
68-404.01.	Repealed. Laws 1965, c. 395, § 27.
68-405.	Repealed. Laws 1965, c. 395, § 27.
68-406.	Repealed. Laws 1965, c. 395, § 27.
68-407.	Repealed. Laws 1965, c. 395, § 27.
68-408.	Repealed. Laws 1965, c. 395, § 27.
68-409.	Repealed. Laws 1965, c. 395, § 27.
68-410.	Repealed. Laws 1965, c. 395, § 27.
68-411.	Repealed. Laws 1965, c. 395, § 27.
68-412.	Repealed. Laws 1965, c. 395, § 27.
68-413.	Repealed. Laws 1965, c. 395, § 27.
68-414.	Repealed. Laws 1965, c. 395, § 27.
68-415.	Repealed. Laws 1965, c. 395, § 27.
68-416.	Repealed. Laws 1965, c. 395, § 27.
68-417.	Repealed. Laws 1965, c. 395, § 27.
68-418.	Repealed. Laws 1965, c. 395, § 27.
68-419.	Repealed. Laws 1965, c. 395, § 27.
68-420.	Repealed. Laws 1965, c. 395, § 27.
68-421.	Repealed. Laws 1965, c. 395, § 27.
68-422.	Repealed. Laws 1965, c. 395, § 27.
68-423.	Repealed. Laws 1965, c. 395, § 27.

68-401 Repealed. Laws 1953, c. 237, § 11.

68-402 Repealed. Laws 1965, c. 395, § 27.

68-403 Repealed. Laws 1965, c. 395, § 27.

68-404 Repealed. Laws 1965, c. 395, § 27.

68-404.01 Repealed. Laws 1965, c. 395, § 27.

68-405 Repealed. Laws 1965, c. 395, § 27.

68-406 Repealed. Laws 1965, c. 395, § 27.

68-407 Repealed. Laws 1965, c. 395, § 27.

68-408 Repealed. Laws 1965, c. 395, § 27.

68-409 Repealed. Laws 1965, c. 395, § 27.

68-410 Repealed. Laws 1965, c. 395, § 27.

68-411 Repealed. Laws 1965, c. 395, § 27.

68-412 Repealed. Laws 1965, c. 395, § 27.

68-413 Repealed. Laws 1965, c. 395, § 27.

68-414 Repealed. Laws 1965, c. 395, § 27.

68-415 Repealed. Laws 1965, c. 395, § 27.

68-416 Repealed. Laws 1965, c. 395, § 27.

68-417 Repealed. Laws 1965, c. 395, § 27.

68-418 Repealed. Laws 1965, c. 395, § 27.

68-419 Repealed. Laws 1965, c. 395, § 27.

68-420 Repealed. Laws 1965, c. 395, § 27.

68-421 Repealed. Laws 1965, c. 395, § 27.

68-422 Repealed. Laws 1965, c. 395, § 27.

68-423 Repealed. Laws 1965, c. 395, § 27.

ARTICLE 5

BOARDING HOME FOR THE AGED AND INFIRM

Section

68-501. Repealed. Laws 1949, c. 193, § 9.

68-502. Repealed. Laws 1949, c. 193, § 9.

68-503. Repealed. Laws 1949, c. 193, § 9.

68-504. Repealed. Laws 1949, c. 193, § 9.

68-505. Repealed. Laws 1949, c. 193, § 9.

68-506. Repealed. Laws 1949, c. 193, § 9.

68-507. Repealed. Laws 1949, c. 193, § 9.

68-508. Repealed. Laws 1953, c. 250, § 2.

68-509. Repealed. Laws 1953, c. 250, § 2.

68-510. Repealed. Laws 1953, c. 250, § 2.

68-511. Repealed. Laws 1953, c. 250, § 2.

68-512. Repealed. Laws 1953, c. 250, § 2.

68-513. Repealed. Laws 1953, c. 250, § 2.

68-514. Repealed. Laws 1953, c. 250, § 2.

68-515. Repealed. Laws 1955, c. 263, § 1.

68-501 Repealed. Laws 1949, c. 193, § 9.

68-502 Repealed. Laws 1949, c. 193, § 9.

68-503 Repealed. Laws 1949, c. 193, § 9.

68-504 Repealed. Laws 1949, c. 193, § 9.

68-505 Repealed. Laws 1949, c. 193, § 9.

68-506 Repealed. Laws 1949, c. 193, § 9.

68-507 Repealed. Laws 1949, c. 193, § 9.

68-508 Repealed. Laws 1953, c. 250, § 2.

68-509 Repealed. Laws 1953, c. 250, § 2.

68-510 Repealed. Laws 1953, c. 250, § 2.

68-511 Repealed. Laws 1953, c. 250, § 2.

68-512 Repealed. Laws 1953, c. 250, § 2.

68-513 Repealed. Laws 1953, c. 250, § 2.

68-514 Repealed. Laws 1953, c. 250, § 2.

68-515 Repealed. Laws 1955, c. 263, § 1.

ARTICLE 6 SOCIAL SECURITY

Cross References

Effect upon retirement systems and pension plans:

Cities of the first and second classes and villages, pension plans, see section 19-3501.

Class V school district employees' retirement system, see section 79-9,113 et seq.

County Employees Retirement Act, see section 23-2326.

Judges' retirement system, see section 24-710.

Metropolitan utilities district retirement plans, see section 14-2111.

Natural resources districts pension plan, see section 2-3228.

School retirement system, see section 79-958.

State employees retirement system, see section 84-1328.

Section

- 68-601. Social security; policy.
- 68-602. Terms, defined.
- 68-603. Agreement with federal government; state agency; approval of Governor.
- 68-604. Agreement with federal government; instrumentality jointly created with other state.
- 68-605. Contributions by state employees; amount.
- 68-606. Contribution by state employees; collection.
- 68-607. Contribution by state employees; adjustments.
- 68-608. Coverage by political subdivisions; plan; modification; approval by state agency.
- 68-609. Coverage by political subdivisions; refusal, amendment, or termination of plan; notice; hearing.
- 68-610. Coverage by political subdivisions; amount; payment.
- 68-611. Coverage by political subdivisions; delinquent payments; penalty; collection.
- 68-612. Repealed. Laws 2010, LB 684, § 13.
- 68-613. Repealed. Laws 2010, LB 684, § 13.
- 68-614. Repealed. Laws 2000, LB 1216, § 31.
- 68-615. Repealed. Laws 2000, LB 1216, § 31.
- 68-616. Repealed. Laws 1987, LB 3, § 3.
- 68-617. Repealed. Laws 2000, LB 1216, § 31.
- 68-618. Repealed. Laws 2000, LB 1216, § 31.
- 68-619. Repealed. Laws 1961, c. 284, § 1.
- 68-620. Cities and villages; special levy; addition to levy limitations; contribution to state agency.
- 68-620.01. Transferred to section 18-1221.
- 68-621. Terms, defined.
- 68-622. Referendum; persons eligible to vote; Governor; powers.
- 68-623. Referendum; how conducted.
- 68-624. Referendum; completion; certification; notice; contents.
- 68-625. Referendum; state agency; prepare plan; modification of state agreement.
- 68-626. Referendum; state agency; forms; make available; aid political subdivisions.
- 68-627. Referendum; supervision.
- 68-628. Repealed. Laws 1988, LB 802, § 41.
- 68-629. Referendum; Governor; appointment of agency to conduct; cost; payment.
- 68-630. Political subdivisions; delinquency in payment; manner of collection.
- 68-631. Metropolitan utilities district; social security; employees; separate group; referendum; effect.
- 68-632. Repealed. Laws 1982, LB 592, § 2.
- 68-633. Repealed. Laws 1986, LB 878, § 2.

68-601 Social security; policy.

(1) In order to extend to the employees of the state and its political subdivisions and to the dependents and survivors of such employees the basic protection accorded to others by the old age and survivors insurance system embodied in the Social Security Act, it is hereby declared to be the policy of the Legislature, subject to the limitations of sections 68-601 to 68-631, that such steps be taken as to provide such protection to employees of the State of Nebraska and its political subdivisions on as broad a basis as is permitted under the act.

(2) In conformity with the policy of the Congress of the United States of America, it is hereby declared to be the policy of the State of Nebraska that the protection afforded employees in positions covered by retirement systems on the date the state agreement is made applicable to service performed in such positions or receiving periodic benefits under such retirement systems at such time will not be impaired as a result of making the agreement so applicable or as a result of legislative or executive action taken in anticipation or in consequence thereof and that the benefits provided by the Social Security Act and made available to employees of the State of Nebraska and of political subdivisions thereof or instrumentalities jointly created by the state and any other state or states, who are or may be members of a retirement system, shall be supplementary to the benefits provided by such retirement system.

Source: Laws 1951, c. 297, § 1, p. 977; Laws 1955, c. 264, § 1, p. 812; Laws 1990, LB 820, § 1; Laws 2000, LB 1216, § 8; Laws 2010, LB684, § 1.

A member of a county mental health board, appointed pursuant to statute, is an "officer of the state or a political subdivision thereof" and, as such, is an employee of the State of Nebraska

for the purposes of the Social Security Act. *Sullivan v. Hajny*, 210 Neb. 481, 315 N.W.2d 443 (1982).

68-602 Terms, defined.

For purposes of sections 68-601 to 68-631, unless the context otherwise requires:

(1) Wages shall mean all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash, except that wages shall not include that part of such remuneration which, even if it were for employment within the meaning of the Federal Insurance Contributions Act, would not constitute wages within the meaning of the act;

(2) Employment shall mean any service performed by an employee in the employ of the State of Nebraska or any political subdivision thereof for such employer except (a) service which, in the absence of an agreement entered into under sections 68-601 to 68-631, would constitute employment as defined in the Social Security Act or (b) service which under the act may not be included in an agreement between the state and the Secretary of Health and Human Services entered into under sections 68-601 to 68-631. Service which under the act may be included in an agreement only upon certification by the Governor in accordance with section 218(d)(3) of the act shall be included in the term employment if and when the Governor issues, with respect to such service, a certificate to the Secretary of Health and Human Services pursuant to subsection (2) of section 68-624;

(3) Employee shall include an officer of the state or a political subdivision thereof;

(4) State agency shall mean the Director of Administrative Services;

(5) Secretary of Health and Human Services shall include any individual to whom the Secretary of Health and Human Services has delegated any functions under the Social Security Act with respect to coverage under such act of employees of states and their political subdivisions and, with respect to any action taken prior to April 11, 1953, includes the Federal Security Administrator and any individual to whom such administrator had delegated any such function;

(6) Political subdivision shall include an instrumentality of the state, of one or more of its political subdivisions, or of the state and one or more of its political subdivisions, but only if such instrumentality is a juristic entity which is essentially legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the state or subdivision;

(7) Social Security Act shall mean the Act of Congress approved August 14, 1935, Chapter 531, 49 Stat. 620, officially cited as the Social Security Act, including regulations and requirements issued pursuant thereto, as such act has been amended or recodified to December 25, 1969, and may from time to time hereafter be amended or recodified; and

(8) Federal Insurance Contributions Act shall mean Chapter 21, subchapters A, B, and C of the Internal Revenue Code, and the term employee tax shall mean the tax imposed by section 3101 of such code.

Source: Laws 1951, c. 297, § 2, p. 978; Laws 1955, c. 264, § 2, p. 813; Laws 1969, c. 536, § 1, p. 2181; Laws 1977, LB 194, § 1; Laws 1984, LB 933, § 2; Laws 1990, LB 820, § 2; Laws 1995, LB 574, § 57; Laws 2000, LB 1216, § 9; Laws 2010, LB684, § 2.

A member of a county mental health board, appointed pursuant to statute, is an "officer of the state or a political subdivision thereof" and, as such, is an employee of the State of Nebraska for the purposes of the Social Security Act. *Sullivan v. Hajny*, 210 Neb. 481, 315 N.W.2d 443 (1982).

68-603 Agreement with federal government; state agency; approval of Governor.

The state agency, with the approval of the Governor, is hereby authorized to enter, on behalf of the State of Nebraska, into an agreement with the Secretary of Health and Human Services, consistent with the terms and provisions of sections 68-601 to 68-631, for the purpose of extending the benefits of the federal old age and survivors' insurance system to employees of the state or any political subdivision thereof with respect to services specified in such agreement which constitute employment. The state agency, with the approval of the Governor, is further authorized to enter, on behalf of the State of Nebraska, into such modifications and amendments to such agreement with the Secretary of Health and Human Services as shall be consistent with the terms and provisions of sections 68-601 to 68-631 if such modification or amendment is necessary or desirable to secure the benefits and exemptions allowable to the State of Nebraska or any political subdivision thereof or to any employee of the State of Nebraska or any political subdivision thereof provided by the Social Security Act, the Federal Insurance Contributions Act, or the employee tax. Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the state agency and Secretary of Health and Human Services shall agree upon, but, except as may

be otherwise required by or under the Social Security Act as to the services to be covered, such agreement shall provide in effect that:

(1) Benefits will be provided for employees whose services are covered by the agreement and their dependents and survivors on the same basis as though such services constituted employment within the meaning of Title II of the Social Security Act;

(2) The state will pay to the Secretary of the Treasury of the United States, at such time or times as may be prescribed under the Social Security Act, contributions with respect to wages equal to the sum of the taxes which would be imposed by the Federal Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of the Federal Insurance Contributions Act;

(3) Such agreement shall be effective with respect to services in employment covered by the agreement performed after a date specified in the agreement, but in no event may it be effective with respect to any such services performed prior to the first day of the calendar year in which such agreement is entered into or in which the modification of the agreement making it applicable to such services is entered into, except that if a political subdivision made reports and payments for social security coverage of its employees to the Internal Revenue Service under the Federal Insurance Contributions Act in the mistaken belief that such action provided coverage for the employees, such agreement shall be effective as of the first day of the first calendar quarter for which such reports were erroneously filed;

(4) All services which constitute employment and are performed in the employ of the state by employees of the state shall be covered by the agreement;

(5) All services which constitute employment, are performed in the employ of a political subdivision of the state, and are covered by a plan which is in conformity with the terms of the agreement and has been approved by the state agency under sections 68-608 to 68-611 shall be covered by the agreement;

(6) As modified, the agreement shall include all services described in either subdivision (4) or (5) of this section or both of such subdivisions and performed by individuals to whom section 218(c)(3)(c) of the Social Security Act is applicable and shall provide that the service of any such individual shall continue to be covered by the agreement in case he or she thereafter becomes eligible to be a member of a retirement system; and

(7) As modified, the agreement shall include all services described in either subdivision (4) or (5) of this section or both of such subdivisions and performed by individuals in positions covered by a retirement system with respect to which the Governor has issued a certificate to the Secretary of Health and Human Services pursuant to subsection (2) of section 68-624.

Source: Laws 1951, c. 297, § 3(1), p. 979; Laws 1955, c. 264, § 3, p. 814; Laws 1969, c. 536, § 2, p. 2183; Laws 1979, LB 576, § 1; Laws 1984, LB 933, § 3; Laws 1990, LB 820, § 3; Laws 2000, LB 1216, § 10; Laws 2010, LB684, § 3.

68-604 Agreement with federal government; instrumentality jointly created with other state.

Any instrumentality jointly created by this state and any other state or states is hereby authorized, upon the granting of like authority by such other state or

states, (1) to enter into an agreement with the Secretary of Health and Human Services whereby the benefits of the federal old age and survivors' insurance system shall be extended to employees of such instrumentality, (2) to require its employees to pay, and for that purpose to deduct from their wages, contributions equal to the amounts which they would be required to pay under section 68-605 if they were covered by an agreement made pursuant to section 68-603, and (3) to make payments to the Secretary of the Treasury of the United States in accordance with such agreement, including payments from its own funds, and otherwise to comply with such agreements. Such an agreement shall, to the extent practicable, be consistent with the terms and provisions of section 68-603 and other provisions of sections 68-601 to 68-631.

Source: Laws 1951, c. 297, § 3(2), p. 980; Laws 1955, c. 264, § 4, p. 816; Laws 1984, LB 933, § 4; Laws 1990, LB 820, § 4; Laws 2000, LB 1216, § 11; Laws 2010, LB684, § 4.

68-605 Contributions by state employees; amount.

Every employee of the state whose services are covered by an agreement entered into under sections 68-603 and 68-604 shall be required to pay for the period of such coverage, contributions, with respect to wages, as defined in section 68-602, equal to the amount of tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act. Such liability shall arise in consideration of the employee's retention in the service of the state, or his or her entry upon such service, after the enactment of sections 68-601 to 68-631.

Source: Laws 1951, c. 297, § 4(1), p. 980; Laws 1955, c. 264, § 5, p. 817; Laws 1987, LB 3, § 1; Laws 2000, LB 1216, § 12; Laws 2010, LB684, § 5.

68-606 Contribution by state employees; collection.

The contribution imposed by section 68-605 shall be collected by deducting the amount of the contribution from wages as and when paid, but failure to make such deduction shall not relieve the employee from liability for such contribution.

Source: Laws 1951, c. 297, § 4(2), p. 981.

68-607 Contribution by state employees; adjustments.

If more or less than the correct amount of the contribution imposed by section 68-605 is paid or deducted with respect to any remuneration, proper adjustments, or refund if adjustment is impracticable, shall be made, without interest, in such manner and at such times as the state agency shall prescribe.

Source: Laws 1951, c. 297, § 4(3), p. 981.

68-608 Coverage by political subdivisions; plan; modification; approval by state agency.

Unless otherwise provided for by sections 68-601 to 68-631, each political subdivision of the state is hereby authorized to submit for approval by the state agency a plan for extending the benefits of Title II of the Social Security Act, in conformity with applicable provisions of such act, to employees of such political subdivision and is hereby further authorized to submit for approval by the

state agency any modification or amendment to any then existing plan if such modification or amendment is necessary or desirable to secure the benefits and exemptions allowable to such political subdivisions thereof or to any employee of the political subdivision in conformity with Title II of the act. Each such plan and any amendment thereof shall be approved by the state agency if it finds that such plan or such plan as amended is in conformity with such requirements as are provided in regulations of the state agency, except that no such plan shall be approved unless: (1) It is in conformity with the requirements of the act and with the agreement entered into under sections 68-603 and 68-604; (2) it provides that all services which constitute employment and are performed in the employ of the political subdivision by employees thereof will be covered by the plan; (3) it specifies the source or sources from which the funds necessary to make the payments required by subsection (1) of section 68-610 and by section 68-611 are expected to be derived and contains reasonable assurance that such sources will be adequate for such purpose; (4) it provides for such methods of administration of the plan by the political subdivision as are found by the state agency to be necessary for the proper and efficient administration of the plan; (5) it provides that the political subdivision will make such reports in such form and containing such information as the state agency may from time to time require and will comply with such provisions as the state agency or the Secretary of Health and Human Services may from time to time find necessary to assure the correctness and verification of such reports; and (6) it authorizes the state agency to terminate the plan in its entirety, in the discretion of the state agency, if it finds that there has been a failure to comply substantially with any provision contained in such plan, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the state agency and may be consistent with the provisions of the act.

Source: Laws 1951, c. 297, § 5(1), p. 981; Laws 1955, c. 264, § 6, p. 817; Laws 1969, c. 536, § 3, p. 2184; Laws 1984, LB 933, § 5; Laws 1990, LB 820, § 5; Laws 2000, LB 1216, § 13; Laws 2010, LB684, § 6.

68-609 Coverage by political subdivisions; refusal, amendment, or termination of plan; notice; hearing.

The state agency shall not finally refuse to approve a plan submitted by a political subdivision under section 68-608, nor any proposed amendment to such plan, and shall not terminate an approved plan, without reasonable notice and opportunity for hearing to the political subdivision affected thereby, nor with respect to the employees of such a political subdivision who are members of a retirement system, until such political subdivision has proposed and adopted a method that is acceptable to the members concerned of protecting the retirement rights and expectancies of such members.

Source: Laws 1951, c. 297, § 5(2), p. 982; Laws 1955, c. 264, § 7, p. 818; Laws 1969, c. 536, § 4, p. 2186.

68-610 Coverage by political subdivisions; amount; payment.

(1) Each political subdivision as to which a plan has been approved under sections 68-608 to 68-611 or prepared under section 68-625 shall be required to pay for the period of such coverage, contributions in the amounts and at the

rates specified in the applicable agreement entered into by the state agency under sections 68-603 and 68-604.

(2) Each political subdivision required to make payments under section 68-609 is authorized, in consideration of the employee's retention in or entry upon employment after enactment of sections 68-601 to 68-631, to impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to his or her wages not exceeding the amount of tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of the act and to deduct the amount of such contribution from his or her wages as and when paid. Failure to deduct such contribution shall not relieve the employee or employer of liability therefor.

Source: Laws 1951, c. 297, § 5(3), p. 982; Laws 1955, c. 264, § 8, p. 819; Laws 1990, LB 820, § 6; Laws 2000, LB 1216, § 14; Laws 2010, LB684, § 7.

68-611 Coverage by political subdivisions; delinquent payments; penalty; collection.

Delinquent payments due under subsection (1) of section 68-610, plus one-half the amount of the delinquent payment, may be recovered by action in a court of competent jurisdiction against the political subdivision liable therefor or may, at the request of the state agency, be deducted from any other money payable to such subdivision by any department or agency of the state.

Source: Laws 1951, c. 297, § 5(4), p. 983; Laws 1953, c. 236, § 1, p. 816.

68-612 Repealed. Laws 2010, LB 684, § 13.

68-613 Repealed. Laws 2010, LB 684, § 13.

68-614 Repealed. Laws 2000, LB 1216, § 31.

68-615 Repealed. Laws 2000, LB 1216, § 31.

68-616 Repealed. Laws 1987, LB 3, § 3.

68-617 Repealed. Laws 2000, LB 1216, § 31.

68-618 Repealed. Laws 2000, LB 1216, § 31.

68-619 Repealed. Laws 1961, c. 284, § 1.

68-620 Cities and villages; special levy; addition to levy limitations; contribution to state agency.

Notwithstanding any tax levy limitations contained in any other law or city home rule charter, when any city or village of this state elects to accept the provisions of sections 68-601 to 68-631 relating to old age and survivors insurance and enters into a written agreement with the state agency as provided in such sections, the city or village shall levy a tax, in addition to all other taxes, in order to defray the cost of such city or village in meeting the

obligations arising by reason of such written agreement, and the revenue raised by such special levy shall be used for no other purpose.

Source: Laws 1951, c. 296, § 1, p. 976; Laws 1955, c. 264, § 14, p. 821; Laws 1971, LB 667, § 1; Laws 1979, LB 187, § 181; Laws 1990, LB 820, § 10; Laws 2000, LB 1216, § 17; Laws 2010, LB684, § 8.

68-620.01 Transferred to section 18-1221.

68-621 Terms, defined.

(1) A referendum group, as referred to in sections 68-621 to 68-630, shall consist of the employees of the state, a single political subdivision of this state, or any instrumentality jointly created by this state and any other state or states, the employees of which are or may be members of a retirement system covering such employees, except that: (a) The employees of the University of Nebraska shall constitute a referendum group; (b) the employees of a Class V school district shall constitute a referendum group; (c) all employees of the State of Nebraska who are or may be members of the School Employees Retirement System of the State of Nebraska, including employees of institutions operated by the Board of Trustees of the Nebraska State Colleges, employees of institutions operated by the Department of Correctional Services and the Department of Health and Human Services, and employees subordinate to the State Board of Education, shall constitute a referendum group; and (d) all employees of school districts of the State of Nebraska, county superintendents, and county school administrators, who are or may be members of the School Employees Retirement System of the State of Nebraska, shall constitute a single referendum group.

(2) The managing authority of a political subdivision or educational institution shall be the board, committee, or council having general authority over a political subdivision, university, college, or school district whose employees constitute or are included in a referendum group; the managing authority of the state shall be the Governor; and insofar as sections 68-601 to 68-631 may be applicable to county superintendents and county school administrators, managing authority shall mean the board of county commissioners or county supervisors of the county in which the county superintendent was elected or with which the county school administrator contracted.

(3) Eligible employees, as referred to in sections 68-621 to 68-630, shall mean those employees of the state or any political subdivision thereof who at or during the time of voting in a referendum as herein provided are in positions covered by a retirement system, are members of such retirement system, and were in such positions at the time of giving of the notice of such referendum, as herein required, except that no such employee shall be considered an eligible employee if at the time of such voting such employee is in a position to which the state agreement applies or if such employee is in service in a police officer or firefighter position.

(4) State agreement, as referred to in sections 68-621 to 68-630, shall mean the agreement between the State of Nebraska and the designated officer of the United States of America entered into pursuant to section 68-603.

Source: Laws 1955, c. 264, § 15, p. 821; Laws 1969, c. 537, § 1, p. 2187; Laws 1973, LB 563, § 6; Laws 1988, LB 802, § 6; Laws 1996, LB 1044, § 297; Laws 1999, LB 272, § 20; Laws 2000, LB 1216, § 18; Laws 2010, LB684, § 9; Laws 2011, LB509, § 13.

68-622 Referendum; persons eligible to vote; Governor; powers.

(1) All employees of the State of Nebraska or any political subdivision thereof or any instrumentality jointly created by this state and any other state or states who have heretofore been excluded from receiving or qualifying for benefits under Title II of the Social Security Act because of membership in a retirement system may, when sections 68-621 to 68-630 have been complied with, vote at a referendum upon the question of whether service in positions covered by such retirement system should be excluded from or included under the state agreement, except that if such a referendum has been conducted and certified in accordance with section 218(d)(3) of the Social Security Act, as amended in 1954, prior to May 18, 1955, then no further referendum shall be required, but this shall not prohibit the conducting of such further referendum.

(2) The Governor may authorize a referendum and designate any agency or individual to supervise its conduct, in accordance with the requirements of section 218(d)(3) of the Social Security Act, on the question of whether service in positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under an agreement under sections 68-601 to 68-631.

Source: Laws 1955, c. 264, § 16, p. 822; Laws 1990, LB 820, § 11; Laws 2000, LB 1216, § 19; Laws 2010, LB684, § 10.

68-623 Referendum; how conducted.

Such referendum shall comply with the conditions set out in section 218(d)(3) of the Social Security Act, and: (1) It shall be by secret written ballot upon the question of whether service in positions covered by such retirement system should be excluded from or included under the state agreement; (2) an opportunity to vote in such referendum shall be given, and shall be limited, to eligible employees; (3) not less than ninety days' notice of such referendum shall be given to all such employees; and (4) such referendum shall be conducted under the supervision of the Governor, or an agency or individual designated by him.

Source: Laws 1955, c. 264, § 17, p. 823.

68-624 Referendum; completion; certification; notice; contents.

(1) Upon completion of such referendum, the agency or individual designated by the Governor to supervise such referendum shall certify the result thereof to the Governor and shall further provide the Governor with such proof as the Governor may require that the conduct of the referendum met the requirements set forth in section 68-623.

(2) Upon receipt of the certificate mentioned in subsection (1) of this section and the additional proof submitted therewith, the Governor shall, if the result of such referendum is favorable to the inclusion of service covered by the retirement system in question under the state agreement, prepare and submit to the Secretary of Health and Human Services the certificate required by section 218(d)(3) of the Social Security Act and shall further notify the state agency forthwith of the result of such referendum, whether such result is favorable or unfavorable to such inclusion.

(3) The state agency shall, within seven days after the receipt of notice of the result of any such referendum as provided for in subsection (2) of this section,

give notice thereof to each managing authority, as defined in subsection (2) of section 68-621, whose employees, or some of whose employees, are included in the referendum group, as defined in subsection (1) of section 68-621, participating in such referendum. Such notice shall include a designation of the employees subordinate to such managing authority affected by such referendum and shall be given to such managing authorities by prepaid United States mail by either registered or certified letter addressed to such managing authority with a return receipt requested.

Source: Laws 1955, c. 264, § 18, p. 823; Laws 1957, c. 242, § 50, p. 861; Laws 1984, LB 933, § 7.

68-625 Referendum; state agency; prepare plan; modification of state agreement.

If, upon referendum, a majority of the eligible employees included in a referendum group which is defined in section 68-621 vote in favor of including service in positions included in such group under the state agreement, the state agency shall, within ninety days after the mailing of notice of the result of such referendum, prepare a plan for extending the benefits of Title II of the Social Security Act to such employees. Such plan shall meet the requirements of section 68-608 and shall inform the managing authority or authorities whose employees are included in such group of the provisions of such plan. Upon completion of such plan, the state agency shall apply for a modification of the state agreement to make it applicable to services performed by the employees of the state or of such political subdivision or educational institution eligible for inclusion under such agreement. The state agency may prepare such applications for modification to cover one or more such plans as it deems advisable, except that the state agency shall not delay application for such modification more than six months after the preparation of any plan as set forth in this section. The state agency may require any such managing authority to furnish any information necessary for the preparation of such plan by the state agency.

Source: Laws 1955, c. 264, § 19, p. 824; Laws 1988, LB 802, § 7.

68-626 Referendum; state agency; forms; make available; aid political subdivisions.

The state agency shall prepare and make available for the use of the state, its political subdivisions, and instrumentalities of the state and any other state or states, forms of notices, ballots, and any other forms necessary for the conduct of the referendum provided for in sections 68-621 to 68-630, and shall aid in the completion and preparation of such instruments by the officers of referendum groups and shall provide advice and assistance to officers of the state, political subdivisions thereof, and instrumentalities of the state and other states jointly, relative to the preparation for and conduct of such referendums, and relative to the preparation and submission of plans for the extension of benefits under Title II of the Social Security Act to the employees thereof.

Source: Laws 1955, c. 264, § 20, p. 825.

68-627 Referendum; supervision.

The Governor or some agency or individual designated by him or her shall, at such time or times and places and in such manner as the Governor or such agency or individual shall determine, conduct and supervise referendums as

provided by sections 68-621 to 68-630 among the eligible employees included in the referendum groups referred to in section 68-621.

Source: Laws 1955, c. 264, § 21, p. 825; Laws 1988, LB 802, § 8.

68-628 Repealed. Laws 1988, LB 802, § 41.

68-629 Referendum; Governor; appointment of agency to conduct; cost; payment.

Upon written request made by the managing authority of any referendum group, other than those referendum groups mentioned in section 68-621, and delivered to the Governor, the Governor, shall, within fifteen days after the receipt of such request, appoint the managing authority, or such other agency or individual, as he may designate, to conduct a referendum as provided by the provisions of sections 68-621 to 68-630 among the eligible employees included in such referendum group within four months of the date of such appointment. The cost of such a referendum shall be paid by the managing authority making the request.

Source: Laws 1955, c. 264, § 23, p. 826.

68-630 Political subdivisions; delinquency in payment; manner of collection.

In addition to other remedies provided for the collection or recovery of delinquent payments due under section 68-610, the state agency may, in the event of any such delinquency, notify the county treasurer of the appropriate county to withhold payment to the delinquent political subdivision of any funds in the hands of such county treasurer to which such delinquent political subdivision would otherwise be entitled. The notice referred to shall be sent to the county treasurer by certified or registered mail, and a copy of such notice shall be sent by ordinary mail to the secretary of the delinquent political subdivision. The county treasurer shall thereafter withhold payments in the manner provided in this section until notified by the state agency that the delinquency has been corrected.

Source: Laws 1955, c. 264, § 24, p. 826; Laws 1987, LB 93, § 17.

68-631 Metropolitan utilities district; social security; employees; separate group; referendum; effect.

Sections 68-601 to 68-631 and any amendments thereto shall, except as otherwise provided in this section, be applicable to metropolitan utilities districts and employees and appointees of metropolitan utilities districts. The state agency contemplated in such sections is authorized to enter, on behalf of the State of Nebraska, into an agreement with any authorized agent of the United States Government for the purpose of extending the benefits of the Federal Old Age and Survivors' Insurance system, as amended by Public Law 761, approved September 1, 1954, to the appointees and employees of each metropolitan utilities district, and all of the appointees and employees covered by a contributory retirement plan are hereby declared to be a separate group for the purposes of referendum and subsequent coverage. Metropolitan utilities districts are hereby declared to be political subdivisions as defined in section 68-602, and the Governor is authorized to appoint the board of directors of any metropolitan utilities district as the agency designated by him or her to supervise any referendum required to be conducted under the Social Security

Act and is authorized to make any certifications required by the act to be made to the Secretary of Health and Human Services.

Source: Laws 1955, c. 25, § 2, p. 118; Laws 1984, LB 933, § 8; Laws 1990, LB 820, § 12; Laws 2000, LB 1216, § 20; Laws 2010, LB684, § 11.

68-632 Repealed. Laws 1982, LB 592, § 2.

68-633 Repealed. Laws 1986, LB 878, § 2.

ARTICLE 7

DEPARTMENT DUTIES

Section

- 68-701. Repealed. Laws 1996, LB 1044, § 985.
- 68-701.01. Repealed. Laws 1996, LB 1044, § 985.
- 68-701.02. Repealed. Laws 1996, LB 1044, § 985.
- 68-701.03. Repealed. Laws 1993, LB 109, § 1.
- 68-702. Repealed. Laws 1961, c. 415, § 38.
- 68-702.01. Repealed. Laws 1990, LB 1067, § 2.
- 68-702.02. Repealed. Laws 1990, LB 1067, § 2.
- 68-702.03. Repealed. Laws 1990, LB 1067, § 2.
- 68-702.04. Repealed. Laws 1967, c. 253, § 4.
- 68-703. Repealed. Laws 1996, LB 1044, § 985.
- 68-703.01. Department of Health and Human Services; federal funds; expenditures; authorized.
- 68-704. Repealed. Laws 2000, LB 889, § 1.
- 68-705. Repealed. Laws 1982, LB 522, § 46.
- 68-706. Repealed. Laws 1982, LB 522, § 46.
- 68-707. Repealed. Laws 1982, LB 522, § 46.
- 68-708. Repealed. Laws 1982, LB 522, § 46.
- 68-709. Repealed. Laws 1982, LB 522, § 46.
- 68-709.01. Repealed. Laws 1981, LB 497, § 1.
- 68-710. Repealed. Laws 1982, LB 592, § 2.
- 68-711. Repealed. Laws 1982, LB 592, § 2.
- 68-712. Repealed. Laws 1982, LB 592, § 2.
- 68-713. Repealed. Laws 1982, LB 592, § 2.
- 68-714. Repealed. Laws 1982, LB 592, § 2.
- 68-715. Repealed. Laws 1982, LB 592, § 2.
- 68-716. Department of Health and Human Services; medical assistance; right of subrogation.
- 68-717. Department of Health and Human Services; assume responsibility for public assistance programs.
- 68-718. Furniture, property, personnel; transferred to Department of Health and Human Services; personnel, how treated.
- 68-719. Certain vendor payments prohibited.
- 68-720. Aid to dependent children; child care subsidy program; administrative disqualification; intentional program violation; disqualification period.
- 68-721. Repealed. Laws 2015, LB 6, § 1.
- 68-722. Repealed. Laws 1990, LB 820, § 13.
- 68-723. Repealed. Laws 1996, LB 1044, § 985.
- 68-724. Repealed. Laws 1999, LB 13, § 1.

68-701 Repealed. Laws 1996, LB 1044, § 985.

68-701.01 Repealed. Laws 1996, LB 1044, § 985.

68-701.02 Repealed. Laws 1996, LB 1044, § 985.

68-701.03 Repealed. Laws 1993, LB 109, § 1.

68-702 Repealed. Laws 1961, c. 415, § 38.

68-702.01 Repealed. Laws 1990, LB 1067, § 2.

68-702.02 Repealed. Laws 1990, LB 1067, § 2.

68-702.03 Repealed. Laws 1990, LB 1067, § 2.

68-702.04 Repealed. Laws 1967, c. 253, § 4.

68-703 Repealed. Laws 1996, LB 1044, § 985.

68-703.01 Department of Health and Human Services; federal funds; expenditures; authorized.

The Department of Health and Human Services has the authority to use any funds which may be made available through an agency of the government of the United States to reimburse any county of this state, either in whole or in part, for the following expenditures: (1) Employment of staff whose duties involve the giving or strengthening of services to children, (2) the return of any nonresident child to his or her place of residence when such child shall be found in the county, and (3) the temporary cost of board and care of a needy child who by necessity requires care in a foster home.

Source: Laws 1959, c. 312, § 1, p. 1152; Laws 1961, c. 415, § 16, p. 1254; Laws 1996, LB 1044, § 298; Laws 2007, LB296, § 242.

68-704 Repealed. Laws 2000, LB 889, § 1.

68-705 Repealed. Laws 1982, LB 522, § 46.

68-706 Repealed. Laws 1982, LB 522, § 46.

68-707 Repealed. Laws 1982, LB 522, § 46.

68-708 Repealed. Laws 1982, LB 522, § 46.

68-709 Repealed. Laws 1982, LB 522, § 46.

68-709.01 Repealed. Laws 1981, LB 497, § 1.

68-710 Repealed. Laws 1982, LB 592, § 2.

68-711 Repealed. Laws 1982, LB 592, § 2.

68-712 Repealed. Laws 1982, LB 592, § 2.

68-713 Repealed. Laws 1982, LB 592, § 2.

68-714 Repealed. Laws 1982, LB 592, § 2.

68-715 Repealed. Laws 1982, LB 592, § 2.

68-716 Department of Health and Human Services; medical assistance; right of subrogation.

An application for medical assistance shall give a right of subrogation to the Department of Health and Human Services or its assigns. Subject to sections

68-921 to 68-925, subrogation shall include every claim or right which the applicant may have against a third party when such right or claim involves money for medical care. The third party shall be liable to make payments directly to the department or its assigns as soon as he or she is notified in writing of the valid claim for subrogation under this section.

Source: Laws 1976, LB 239, § 1; Laws 1982, LB 522, § 35; Laws 1988, LB 419, § 14; Laws 1989, LB 362, § 7; Laws 1996, LB 1044, § 300; Laws 1996, LB 1155, § 22; Laws 2006, LB 1248, § 69; Laws 2007, LB296, § 243.

Upon filing of a notice of subrogation under this section, in a workers' compensation case, the Department of Social Services and any third party liable to the department are entitled to a

determination of the subrogation interest. *Kidd v. Winchell's Donut House*, 237 Neb. 176, 465 N.W.2d 442 (1991).

68-717 Department of Health and Human Services; assume responsibility for public assistance programs.

The Department of Health and Human Services shall assume the responsibility for all public assistance, including aid to families with dependent children, emergency assistance, assistance to the aged, blind, or disabled, medically handicapped children's services, commodities, the Supplemental Nutrition Assistance Program, and medical assistance.

Source: Laws 1982, LB 522, § 33; Laws 1983, LB 604, § 23; Laws 1985, LB 249, § 4; Laws 1989, LB 362, § 8; Laws 1996, LB 1044, § 301; Laws 2007, LB296, § 244; Laws 2009, LB288, § 17.

68-718 Furniture, property, personnel; transferred to Department of Health and Human Services; personnel, how treated.

All furniture, equipment, books, files, records, and personnel utilized by the county divisions or boards of public welfare for the administration of public assistance programs shall be transferred and delivered to the Department of Health and Human Services. The transferred employees shall not lose any accrued benefits or status due to the transfer and shall receive the same benefits as other state employees, including participation in the State Employees Retirement Fund.

Source: Laws 1982, LB 522, § 34; Laws 1996, LB 1044, § 302; Laws 2007, LB296, § 245.

This section as it existed prior to January 1, 1997, does not impermissibly authorize the transfer of property purchased solely with county funds from the county for the benefit of others outside that county; violate Neb. Const. art. VIII, sec. 1A, which prohibits the State from levying a property tax for state purposes; nor violate the county's due process rights under U.S.

Const. amends. V and XIV and Neb. Const. art. I, sec. 3. *Rock Cty. v. Spire*, 235 Neb. 434, 455 N.W.2d 763 (1990).

Under prior law, a county's refusal to return retirement plan contributions made by the county on behalf of transferred employees is not a loss of benefits in violation of this section. *Bamesberger v. Albert*, 227 Neb. 782, 420 N.W.2d 289 (1988).

68-719 Certain vendor payments prohibited.

No payments shall be made to any vendor, under Title XIX of the Social Security Act, as reimbursement for dues for any educational or professional association.

Source: Laws 1982, LB 933, § 6.

68-720 Aid to dependent children; child care subsidy program; administrative disqualification; intentional program violation; disqualification period.

(1) The Department of Health and Human Services shall establish an administrative disqualification process for the aid to dependent children program

described in section 43-512 and the child care subsidy program established pursuant to section 68-1202. The department may initiate an administrative disqualification proceeding when it has reason to believe, on the basis of sufficient documentary evidence, that an individual has committed an intentional program violation. Proceedings under this section shall be subject to the Administrative Procedure Act.

(2) If an individual is found to have committed an intentional program violation, a period of disqualification shall be imposed. The period may be determined by the Department of Health and Human Services after an administrative disqualification hearing or without a hearing if the individual waives his or her right to such hearing. The period of disqualification shall be: (a) For a first violation, up to one year; (b) for a second violation, up to two years; and (c) for a third violation, permanent disqualification. The penalties described in this subsection shall also be imposed if the individual is found by a court to have violated section 68-1017.

(3) For the aid to dependent children program, only the individual found to have committed the intentional program violation shall be disqualified under this section. For the child care subsidy program, the individual found to have committed the intentional violation shall disqualify such individual and his or her family under this section. The department shall inform each applicant in writing of the penalties described in this section for intentional program violations each time an application for benefits is made to either program.

(4) For purposes of this section, intentional program violation means any action by an individual to intentionally (a) make a false statement, either verbally or in writing, to obtain benefits to which the individual is not entitled, (b) conceal information to obtain benefits to which the individual is not entitled, or (c) alter one or more documents to obtain benefits to which the individual is not entitled.

(5) The department may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2008, LB797, § 30.

Cross References

Administrative Procedure Act, see section 84-920.

68-721 Repealed. Laws 2015, LB 6, § 1.

68-722 Repealed. Laws 1990, LB 820, § 13.

68-723 Repealed. Laws 1996, LB 1044, § 985.

68-724 Repealed. Laws 1999, LB 13, § 1.

ARTICLE 8

AID FOR THE DISABLED

Section	
68-801.	Repealed. Laws 1965, c. 395, § 27.
68-802.	Repealed. Laws 1965, c. 395, § 27.
68-803.	Repealed. Laws 1965, c. 395, § 27.
68-804.	Repealed. Laws 1965, c. 395, § 27.
68-804.01.	Repealed. Laws 1965, c. 395, § 27.
68-805.	Repealed. Laws 1965, c. 395, § 27.

Section	
68-806.	Repealed. Laws 1965, c. 395, § 27.
68-807.	Repealed. Laws 1965, c. 395, § 27.
68-808.	Repealed. Laws 1965, c. 395, § 27.
68-809.	Repealed. Laws 1965, c. 395, § 27.
68-810.	Repealed. Laws 1965, c. 395, § 27.
68-811.	Repealed. Laws 1965, c. 395, § 27.
68-812.	Repealed. Laws 1965, c. 395, § 27.
68-813.	Repealed. Laws 1965, c. 395, § 27.

68-801 Repealed. Laws 1965, c. 395, § 27.

68-802 Repealed. Laws 1965, c. 395, § 27.

68-803 Repealed. Laws 1965, c. 395, § 27.

68-804 Repealed. Laws 1965, c. 395, § 27.

68-804.01 Repealed. Laws 1965, c. 395, § 27.

68-805 Repealed. Laws 1965, c. 395, § 27.

68-806 Repealed. Laws 1965, c. 395, § 27.

68-807 Repealed. Laws 1965, c. 395, § 27.

68-808 Repealed. Laws 1965, c. 395, § 27.

68-809 Repealed. Laws 1965, c. 395, § 27.

68-810 Repealed. Laws 1965, c. 395, § 27.

68-811 Repealed. Laws 1965, c. 395, § 27.

68-812 Repealed. Laws 1965, c. 395, § 27.

68-813 Repealed. Laws 1965, c. 395, § 27.

ARTICLE 9

MEDICAL ASSISTANCE ACT

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68-901.	Medical Assistance Act; act, how cited.
68-902.	Purposes of act.
68-903.	Medical assistance program; established.
68-904.	Legislative findings.
68-905.	Program of medical assistance; statement of public policy.
68-906.	Medical assistance; state accepts federal provisions.
68-907.	Terms, defined.
68-908.	Department; powers and duties.
68-909.	Existing contracts, agreements, rules, regulations, plan, and waivers; how treated; report required; exception; department; powers and duties.
68-910.	Medical assistance payments; source of funds.
68-911.	Medical assistance; mandated and optional coverage; department; submit state plan amendment or waiver.
68-912.	Limits on goods and services; considerations; procedure.
68-913.	Medical assistance program; public awareness; public school district; hospital; duties.
68-914.	Application for medical assistance; form; department; decision; appeal.
68-915.	Eligibility.
68-916.	Medical assistance; application; assignment of rights; exception.

PUBLIC ASSISTANCE

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68-917.	Applicant or recipient; failure to cooperate; effect.
68-918.	Restoration of rights; when.
68-919.	Medical assistance recipient; liability; when; claim; procedure; department; powers; recovery of medical assistance reimbursement; procedure.
68-920.	Department; garnish employment income; when; limitation.
68-921.	Entitlement of spouse; terms, defined.
68-922.	Amount of entitlement; department; rules and regulations.
68-923.	Assets; eligibility for assistance; future medical support; considerations; subrogation.
68-924.	Designation of assets; procedure.
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68-926.	Legislative findings.
68-927.	Terms, defined.
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68-934.	False Medicaid Claims Act; act, how cited.
68-935.	Terms, defined.
68-936.	Presentation of false medicaid claim; civil liability; violation of act; civil penalty; damages; costs and attorney's fees.
68-937.	Failure to report.
68-938.	Charge, solicitation, acceptance, or receipt; unlawful; when.
68-939.	Records; duties; acts prohibited; liability; costs and attorney's fees.
68-940.	Penalties or damages; considerations; liability; costs and attorney's fees.
68-940.01.	State Medicaid Fraud Control Unit Cash Fund; created; use; investment.
68-941.	Limitation of actions; burden of proof.
68-942.	Investigation and prosecution.
68-943.	State medicaid fraud control unit; certification.
68-944.	State medicaid fraud control unit; powers and duties.
68-945.	Attorney General; powers and duties.
68-946.	Attorney General; access to records.
68-947.	Contempt of court.
68-948.	Repealed. Laws 2017, LB644, § 21.
68-949.	Medical assistance program; legislative intent; department; duties.
68-950.	Medicaid Prescription Drug Act, how cited.
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68-952.	Terms, defined.
68-953.	Preferred drug list; department; establish and maintain; pharmaceutical and therapeutics committee; members; expenses.
68-954.	Preferred drug list; considerations; availability of list.
68-955.	Prescription of drug not on preferred drug list; conditions.
68-956.	Department; duties.
68-957.	Repealed. Laws 2017, LB4, § 1.
68-958.	Repealed. Laws 2017, LB4, § 1.
68-959.	Repealed. Laws 2017, LB4, § 1.
68-960.	Repealed. Laws 2017, LB4, § 1.
68-961.	Repealed. Laws 2017, LB4, § 1.
68-962.	Autism Treatment Program Act; act, how cited.
68-963.	Purpose of Autism Treatment Program Act.
68-964.	Autism Treatment Program; created; administration; funding.
68-965.	Autism Treatment Program Cash Fund; created; use; investment.
68-966.	Department; apply for medical assistance program waiver or amendment; legislative intent.
68-967.	Comprehensive treatment of pediatric feeding disorders; amendment to state medicaid plan; department; duties.
68-968.	School-based health centers; School Health Center Advisory Council; members.

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- 68-969. Amendment to medicaid state plan or waiver; children eligible for medicaid and CHIP; treatment for pregnant women; department; duties.
- 68-970. Nebraska Regional Poison Center; legislative findings.
- 68-971. Amendment to medicaid state plan or waiver; Nebraska Regional Poison Center; payments; use; department; duties; University of Nebraska Medical Center; report.
- 68-972. Prenatal care; legislative findings; creation of separate program; benefits provided; department; submit state plan amendment or waiver; eligibility.
- 68-973. Improper payments; postpayment reimbursement; legislative findings.
- 68-974. Recovery audit contractors; contracts; contents; duties; health insurance premium assistance payment program; contract; department; powers and duties; form of records authorized; appeal; report.
- 68-975. Department; apply for amendment to medicaid state plan; multisystemic therapy for youth.
- 68-976. Provider with high categorical risk level; fingerprint-based criminal history record information check; Nebraska State Patrol; issue report; cost; department; powers and duties.
- 68-977. Ground Emergency Medical Transport Act; act, how cited.
- 68-978. Terms, defined.
- 68-979. Legislative intent.
- 68-980. Supplemental reimbursement.
- 68-981. Supplemental reimbursement; eligibility.
- 68-982. Supplemental reimbursement; calculation and payment.
- 68-983. Intergovernmental transfer program; department; powers and duties.
- 68-984. Agreement.
- 68-985. Governmental entity; duties.
- 68-986. Department; amendment to medicaid state plan; department; powers.
- 68-987. Department; duties.
- 68-988. Increased capitation payments; commencement.
- 68-989. Disclosure by applicant; income and assets; action for recovery of medical assistance authorized.
- 68-990. Medical assistance; transfers; security for recovery of indebtedness to department; lien; notice; filing; department; duties.
- 68-991. Medical provider; authority to apply for medical assistance.

68-901 Medical Assistance Act; act, how cited.

Sections 68-901 to 68-991 shall be known and may be cited as the Medical Assistance Act.

Source: Laws 2006, LB 1248, § 1; Laws 2008, LB830, § 1; Laws 2009, LB27, § 1; Laws 2009, LB288, § 18; Laws 2009, LB342, § 1; Laws 2009, LB396, § 1; Laws 2010, LB1106, § 1; Laws 2011, LB525, § 1; Laws 2012, LB541, § 1; Laws 2012, LB599, § 2; Laws 2015, LB500, § 1; Laws 2016, LB698, § 15; Laws 2017, LB268, § 10; Laws 2017, LB578, § 1.

By enacting the Medical Assistance Act, Nebraska elected to participate in the federal Medicaid program; therefore, the State must comply with federal Medicaid statutes and regulations. *Smalley v. Nebraska Dept. of Health & Human Servs.*, 283 Neb. 544, 811 N.W.2d 246 (2012).

68-902 Purposes of act.

The purposes of the Medical Assistance Act are to (1) reorganize and recodify statutes relating to the medical assistance program, (2) provide for implementation of the Medicaid Reform Plan, (3) clarify public policy relating to the medical assistance program, (4) provide for administration of the medical assistance program within the department, and (5) provide for legislative oversight and public comment regarding the medical assistance program.

Source: Laws 2006, LB 1248, § 2.

68-903 Medical assistance program; established.

The medical assistance program is established, which shall also be known as medicaid.

Source: Laws 1965, c. 397, § 3, p. 1277; R.S.1943, (2003), § 68-1018; Laws 2006, LB 1248, § 3.

Nebraska has elected to participate in the federal Medicaid program through the enactment of this section. *Boruch v. Nebraska Dept. of Health and Human Servs.*, 11 Neb. App. 713, 659 N.W.2d 848 (2003).

68-904 Legislative findings.

The Legislature finds that (1) many low-income Nebraska residents have health care and related needs and are unable, without assistance, to meet such needs, (2) publicly funded medical assistance provides essential coverage for necessary health care and related services for eligible low-income Nebraska children, pregnant women and families, aged persons, and persons with disabilities, (3) publicly funded medical assistance alone cannot meet all of the health care and related needs of all low-income Nebraska residents, (4) the State of Nebraska cannot sustain a rate of growth in medical assistance expenditures that exceeds the rate of growth of General Fund revenue, (5) policies must be established for the medical assistance program that will effectively address the health care and related needs of eligible recipients and effectively moderate the growth of medical assistance expenditures, and (6) publicly funded medical assistance must be integrated with other public and private health care and related initiatives providing access to health care and related services for Nebraska residents.

Source: Laws 2006, LB 1248, § 4.

68-905 Program of medical assistance; statement of public policy.

It is the public policy of the State of Nebraska to provide a program of medical assistance on behalf of eligible low-income Nebraska residents that (1) assists eligible recipients to access necessary and appropriate health care and related services, (2) emphasizes prevention, early intervention, and the provision of health care and related services in the least restrictive environment consistent with the health care and related needs of the recipients of such services, (3) emphasizes personal independence, self-sufficiency, and freedom of choice, (4) emphasizes personal responsibility and accountability for the payment of health care and related expenses and the appropriate utilization of health care and related services, (5) cooperates with public and private sector entities to promote the public health, (6) cooperates with providers, public and private employers, and private sector insurers in providing access to health care and related services and encouraging and supporting the development and utilization of alternatives to publicly funded medical assistance for such services, (7) is appropriately managed and fiscally sustainable, and (8) qualifies for federal matching funds under federal law.

Source: Laws 2006, LB 1248, § 5.

68-906 Medical assistance; state accepts federal provisions.

For purposes of paying medical assistance under the Medical Assistance Act and sections 68-1002 and 68-1006, the State of Nebraska accepts and assents to all applicable provisions of Title XIX and Title XXI of the federal Social Security Act. Any reference in the Medical Assistance Act to the federal Social Security

Act or other acts or sections of federal law shall be to such federal acts or sections as they existed on January 1, 2010.

Source: Laws 1965, c. 397, § 6, p. 1278; Laws 1993, LB 808, § 2; Laws 1996, LB 1044, § 324; Laws 1998, LB 1063, § 7; Laws 2000, LB 1115, § 10; Laws 2005, LB 301, § 4; R.S.Supp.,2005, § 68-1021; Laws 2006, LB 1248, § 6; Laws 2007, LB185, § 1; Laws 2008, LB797, § 4; Laws 2009, LB288, § 19; Laws 2010, LB849, § 13.

This section requires the director of the Department of Health and Human Services Finance and Support to promulgate rules and policies implementing the Nebraska Medicaid program.

Boruch v. Nebraska Dept. of Health and Human Servs., 11 Neb. App. 713, 659 N.W.2d 848 (2003).

68-907 Terms, defined.

For purposes of the Medical Assistance Act:

(1) Committee means the Health and Human Services Committee of the Legislature;

(2) Department means the Department of Health and Human Services;

(3) Medicaid Reform Plan means the Medicaid Reform Plan submitted on December 1, 2005, pursuant to the Medicaid Reform Act enacted pursuant to Laws 2005, LB 709;

(4) Medicaid state plan means the comprehensive written document, developed and amended by the department and approved by the federal Centers for Medicare and Medicaid Services, which describes the nature and scope of the medical assistance program and provides assurances that the department will administer the program in compliance with federal requirements;

(5) Provider means a person providing health care or related services under the medical assistance program;

(6) School-based health center means a health center that:

(a) Is located in or is adjacent to a school facility;

(b) Is organized through school, school district, learning community, community, and provider relationships;

(c) Is administered by a sponsoring facility;

(d) Provides school-based health services onsite during school hours to children and adolescents by health care professionals in accordance with state and local laws, rules, and regulations, established standards, and community practice;

(e) Does not perform abortion services or refer or counsel for abortion services and does not dispense, prescribe, or counsel for contraceptive drugs or devices; and

(f) Does not serve as a child's or an adolescent's medical or dental home but augments and supports services provided by the medical or dental home;

(7) School-based health services may include any combination of the following as determined in partnership with a sponsoring facility, the school district, and the community:

(a) Medical health;

(b) Behavioral and mental health;

(c) Preventive health; and

(d) Oral health;

(8) Sponsoring facility means:

- (a) A hospital;
- (b) A public health department as defined in section 71-1626;
- (c) A federally qualified health center as defined in section 1905(l)(2)(B) of the federal Social Security Act, 42 U.S.C. 1396d(l)(2)(B), as such act and section existed on January 1, 2010;
- (d) A nonprofit health care entity whose mission is to provide access to comprehensive primary health care services;
- (e) A school or school district; or
- (f) A program administered by the Indian Health Service or the federal Bureau of Indian Affairs or operated by an Indian tribe or tribal organization under the federal Indian Self-Determination and Education Assistance Act, or an urban Indian program under Title V of the federal Indian Health Care Improvement Act, as such acts existed on January 1, 2010; and

(9) Waiver means the waiver of applicability to the state of one or more provisions of federal law relating to the medical assistance program based on an application by the department and approval of such application by the federal Centers for Medicare and Medicaid Services.

Source: Laws 2006, LB 1248, § 7; Laws 2007, LB296, § 246; Laws 2010, LB1106, § 2.

68-908 Department; powers and duties.

- (1) The department shall administer the medical assistance program.
- (2) The department may (a) enter into contracts and interagency agreements, (b) adopt and promulgate rules and regulations, (c) adopt fee schedules, (d) apply for and implement waivers and managed care plans for services for eligible recipients, including services under the Nebraska Behavioral Health Services Act, and (e) perform such other activities as necessary and appropriate to carry out its duties under the Medical Assistance Act. A covered item or service as described in section 68-911 that is furnished through a school-based health center, furnished by a provider, and furnished under a managed care plan pursuant to a waiver does not require prior consultation or referral by a patient's primary care physician to be covered. Any federally qualified health center providing services as a sponsoring facility of a school-based health center shall be reimbursed for such services provided at a school-based health center at the federally qualified health center reimbursement rate.
- (3) The department shall maintain the confidentiality of information regarding applicants for or recipients of medical assistance and such information shall only be used for purposes related to administration of the medical assistance program and the provision of such assistance or as otherwise permitted by federal law.
- (4) The department shall prepare an annual summary and analysis of the medical assistance program for legislative and public review. The department shall submit a report of such summary and analysis to the Governor and the Legislature electronically no later than December 1 of each year.

Source: Laws 1965, c. 397, § 8, p. 1278; Laws 1967, c. 413, § 2, p. 1278; Laws 1982, LB 522, § 43; Laws 1996, LB 1044, § 325; R.S.1943, (2003), § 68-1023; Laws 2006, LB 1248, § 8; Laws 2007, LB296,

§ 247; Laws 2009, LB288, § 20; Laws 2010, LB1106, § 3; Laws 2012, LB782, § 91; Laws 2012, LB1158, § 1; Laws 2017, LB417, § 7.

Cross References

Nebraska Behavioral Health Services Act, see section 71-801.

68-909 Existing contracts, agreements, rules, regulations, plan, and waivers; how treated; report required; exception; department; powers and duties.

(1) All contracts, agreements, rules, and regulations relating to the medical assistance program as entered into or adopted and promulgated by the department prior to July 1, 2006, and all provisions of the medicaid state plan and waivers adopted by the department prior to July 1, 2006, shall remain in effect until revised, amended, repealed, or nullified pursuant to law.

(2) Prior to the adoption and promulgation of proposed rules and regulations under section 68-912 or relating to the implementation of medicaid state plan amendments or waivers, the department shall provide a report to the Governor and the Legislature no later than December 1 before the next regular session of the Legislature summarizing the purpose and content of such proposed rules and regulations and the projected impact of such proposed rules and regulations on recipients of medical assistance and medical assistance expenditures. The report submitted to the Legislature shall be submitted electronically. Any changes in medicaid copayments in fiscal year 2011-12 are exempt from the reporting requirement of this subsection and the requirements of section 68-912.

(3) The department shall monitor the implementation of rules and regulations, medicaid state plan amendments, and waivers adopted under the Medical Assistance Act and the effect of such rules and regulations, amendments, or waivers on eligible recipients of medical assistance and medical assistance expenditures.

Source: Laws 2006, LB 1248, § 9; Laws 2008, LB928, § 15; Laws 2011, LB468, § 1; Laws 2012, LB782, § 92; Laws 2017, LB417, § 8; Laws 2017, LB644, § 16.

68-910 Medical assistance payments; source of funds.

(1) Medical assistance shall be paid from General Funds, cash funds, federal funds, and such other funds as may qualify for federal matching funds under federal law. General Fund appropriations for the program shall be based on an assessment by the Legislature of General Fund revenue and the competing needs of other state-funded programs.

(2) Medical assistance paid on behalf of eligible recipients may include, but is not limited to, (a) direct payments to vendors under a fee-for-service, managed care, or other provider contract, (b) premium payments, deductibles, and coinsurance for private health insurance coverage, employer-sponsored coverage, catastrophic health insurance coverage, or long-term care insurance coverage, and (c) payments to providers who serve eligible recipients of medical assistance or low-income uninsured persons and meet federal and state disproportionate-share payment requirements.

(3) Medical assistance shall not be paid directly to eligible recipients.

Source: Laws 1965, c. 397, § 7, p. 1278; Laws 1967, c. 410, § 2, p. 1274; Laws 1979, LB 138, § 1; Laws 1981, LB 39, § 1; Laws 1982, LB 522, § 42; Laws 1983, LB 604, § 24; Laws 1986, LB 1253, § 1; R.S.1943, (2003), § 68-1022; Laws 2006, LB 1248, § 10.

68-911 Medical assistance; mandated and optional coverage; department; submit state plan amendment or waiver.

(1) Medical assistance shall include coverage for health care and related services as required under Title XIX of the federal Social Security Act, including, but not limited to:

- (a) Inpatient and outpatient hospital services;
- (b) Laboratory and X-ray services;
- (c) Nursing facility services;
- (d) Home health services;
- (e) Nursing services;
- (f) Clinic services;
- (g) Physician services;
- (h) Medical and surgical services of a dentist;
- (i) Nurse practitioner services;
- (j) Nurse midwife services;
- (k) Pregnancy-related services;
- (l) Medical supplies;
- (m) Mental health and substance abuse services; and

(n) Early and periodic screening and diagnosis and treatment services for children which shall include both physical and behavioral health screening, diagnosis, and treatment services.

(2) In addition to coverage otherwise required under this section, medical assistance may include coverage for health care and related services as permitted but not required under Title XIX of the federal Social Security Act, including, but not limited to:

- (a) Prescribed drugs;
- (b) Intermediate care facilities for persons with developmental disabilities;
- (c) Home and community-based services for aged persons and persons with disabilities;
- (d) Dental services;
- (e) Rehabilitation services;
- (f) Personal care services;
- (g) Durable medical equipment;
- (h) Medical transportation services;
- (i) Vision-related services;
- (j) Speech therapy services;
- (k) Physical therapy services;
- (l) Chiropractic services;

- (m) Occupational therapy services;
- (n) Optometric services;
- (o) Podiatric services;
- (p) Hospice services;
- (q) Mental health and substance abuse services;
- (r) Hearing screening services for newborn and infant children; and
- (s) Administrative expenses related to administrative activities, including outreach services, provided by school districts and educational service units to students who are eligible or potentially eligible for medical assistance.

(3) No later than July 1, 2009, the department shall submit a state plan amendment or waiver to the federal Centers for Medicare and Medicaid Services to provide coverage under the medical assistance program for community-based secure residential and subacute behavioral health services for all eligible recipients, without regard to whether the recipient has been ordered by a mental health board under the Nebraska Mental Health Commitment Act to receive such services.

(4) On or before October 1, 2014, the department, after consultation with the State Department of Education, shall submit a state plan amendment to the federal Centers for Medicare and Medicaid Services, as necessary, to provide that the following are direct reimbursable services when provided by school districts as part of an individualized education program or an individualized family service plan: Early and periodic screening, diagnosis, and treatment services for children; medical transportation services; mental health services; nursing services; occupational therapy services; personal care services; physical therapy services; rehabilitation services; speech therapy and other services for individuals with speech, hearing, or language disorders; and vision-related services.

Source: Laws 1965, c. 397, § 4, p. 1277; Laws 1967, c. 413, § 1, p. 1278; Laws 1969, c. 542, § 1, p. 2193; Laws 1993, LB 804, § 1; Laws 1993, LB 808, § 1; Laws 1996, LB 1044, § 315; Laws 1998, LB 1063, § 5; Laws 1998, LB 1073, § 60; Laws 2002, Second Spec. Sess., LB 8, § 1; R.S.1943, (2003), § 68-1019; Laws 2006, LB 1248, § 11; Laws 2009, LB603, § 1; Laws 2013, LB23, § 12; Laws 2013, LB556, § 5; Laws 2014, LB276, § 4.

Cross References

Nebraska Mental Health Commitment Act, see section 71-901.

68-912 Limits on goods and services; considerations; procedure.

(1) The department may establish (a) premiums, copayments, and deductibles for goods and services provided under the medical assistance program, (b) limits on the amount, duration, and scope of goods and services that recipients may receive under the medical assistance program subject to subsection (5) of this section, and (c) requirements for recipients of medical assistance as a necessary condition for the continued receipt of such assistance, including, but not limited to, active participation in care coordination and appropriate disease management programs and activities.

(2) In establishing and limiting coverage for services under the medical assistance program, the department shall consider (a) the effect of such cover-

age and limitations on recipients of medical assistance and medical assistance expenditures, (b) the public policy in section 68-905, (c) the experience and outcomes of other states, (d) the nature and scope of benchmark or benchmark-equivalent health insurance coverage as recognized under federal law, and (e) other relevant factors as determined by the department.

(3) Coverage for mandatory and optional services and limitations on covered services as established by the department prior to July 1, 2006, shall remain in effect until revised, amended, repealed, or nullified pursuant to law. Any proposed reduction or expansion of services or limitation of covered services by the department under this section shall be subject to the reporting and review requirements of section 68-909.

(4) Except as otherwise provided in this subsection, proposed rules and regulations under this section relating to the establishment of premiums, copayments, or deductibles for eligible recipients or limits on the amount, duration, or scope of covered services for eligible recipients shall not become effective until the conclusion of the earliest regular session of the Legislature in which there has been a reasonable opportunity for legislative consideration of such rules and regulations. This subsection does not apply to rules and regulations that are (a) required by federal or state law, (b) related to a waiver in which recipient participation is voluntary, or (c) proposed due to a loss of federal matching funds relating to a particular covered service or eligibility category. Legislative consideration includes, but is not limited to, the introduction of a legislative bill, a legislative resolution, or an amendment to pending legislation relating to such rules and regulations.

(5) Any limitation on the amount, duration, or scope of goods and services that recipients may receive under the medical assistance program shall give full and deliberate consideration to the role of home health services from private duty nurses in meeting the needs of a disabled family member or disabled person.

Source: Laws 1993, LB 804, § 2; Laws 1996, LB 1044, § 316; R.S.1943, (2003), § 68-1019.01; Laws 2006, LB 1248, § 12; Laws 2012, LB1122, § 1.

68-913 Medical assistance program; public awareness; public school district; hospital; duties.

(1) Each public school district shall annually, at the beginning of the school year, provide written information supplied by the department to every student describing the availability of children's health services provided under the medical assistance program.

(2) Each hospital shall provide the mother of every child born in such hospital, at the time of such birth, written information provided by the department describing the availability of children's health services provided under the medical assistance program.

(3) The department shall develop and implement other activities designed to increase public awareness of the availability of children's health services provided under the medical assistance program. Such activities shall include materials and efforts designed to increase participation in the program by minority populations.

Source: Laws 1998, LB 1063, § 10; R.S.1943, (2003), § 68-1025.01; Laws 2006, LB 1248, § 13; Laws 2007, LB296, § 248.

68-914 Application for medical assistance; form; department; decision; appeal.

(1) An applicant for medical assistance shall file an application with the department in a manner and form prescribed by the department. The department shall process each application to determine whether the applicant is eligible for medical assistance. The department shall provide a determination of eligibility for medical assistance in a timely manner in compliance with 42 C.F.R. 435.911, including, but not limited to, a timely determination of eligibility for coverage of an emergency medical condition, such as labor and delivery.

(2) The department shall notify an applicant for or recipient of medical assistance of any decision of the department to deny or discontinue eligibility or to deny or modify medical assistance. Decisions of the department, including the failure of the department to act with reasonable promptness, may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 2006, LB 1248, § 14; Laws 2011, LB494, § 1.

Cross References

Administrative Procedure Act, see section 84-920.

68-915 Eligibility.

The following persons shall be eligible for medical assistance:

- (1) Dependent children as defined in section 43-504;
- (2) Aged, blind, and disabled persons as defined in sections 68-1002 to 68-1005;
- (3) Children under nineteen years of age who are eligible under section 1905(a)(i) of the federal Social Security Act;
- (4) Persons who are presumptively eligible as allowed under sections 1920 and 1920B of the federal Social Security Act;
- (5) Children under nineteen years of age with a family income equal to or less than two hundred percent of the Office of Management and Budget income poverty guideline, as allowed under Title XIX and Title XXI of the federal Social Security Act, without regard to resources, and pregnant women with a family income equal to or less than one hundred eighty-five percent of the Office of Management and Budget income poverty guideline, as allowed under Title XIX and Title XXI of the federal Social Security Act, without regard to resources. Children described in this subdivision and subdivision (6) of this section shall remain eligible for six consecutive months from the date of initial eligibility prior to redetermination of eligibility. The department may review eligibility monthly thereafter pursuant to rules and regulations adopted and promulgated by the department. The department may determine upon such review that a child is ineligible for medical assistance if such child no longer meets eligibility standards established by the department;
- (6) For purposes of Title XIX of the federal Social Security Act as provided in subdivision (5) of this section, children with a family income as follows:
 - (a) Equal to or less than one hundred fifty percent of the Office of Management and Budget income poverty guideline with eligible children one year of age or younger;

(b) Equal to or less than one hundred thirty-three percent of the Office of Management and Budget income poverty guideline with eligible children over one year of age and under six years of age; or

(c) Equal to or less than one hundred percent of the Office of Management and Budget income poverty guideline with eligible children six years of age or older and less than nineteen years of age;

(7) Persons who are medically needy caretaker relatives as allowed under 42 U.S.C. 1396d(a)(ii);

(8) As allowed under 42 U.S.C. 1396a(a)(10)(A)(ii), disabled persons as defined in section 68-1005 with a family income of less than two hundred fifty percent of the Office of Management and Budget income poverty guideline and who, but for earnings in excess of the limit established under 42 U.S.C. 1396d(q)(2)(B), would be considered to be receiving federal Supplemental Security Income. The department shall apply for a waiver to disregard any unearned income that is contingent upon a trial work period in applying the Supplemental Security Income standard. Such disabled persons shall be subject to payment of premiums as a percentage of family income beginning at not less than two hundred percent of the Office of Management and Budget income poverty guideline. Such premiums shall be graduated based on family income and shall not be less than two percent or more than ten percent of family income;

(9) As allowed under 42 U.S.C. 1396a(a)(10)(A)(ii), persons who:

(a) Have been screened for breast and cervical cancer under the Centers for Disease Control and Prevention breast and cervical cancer early detection program established under Title XV of the federal Public Health Service Act, 42 U.S.C. 300k et seq., in accordance with the requirements of section 1504 of such act, 42 U.S.C. 300n, and who need treatment for breast or cervical cancer, including precancerous and cancerous conditions of the breast or cervix;

(b) Are not otherwise covered under creditable coverage as defined in section 2701(c) of the federal Public Health Service Act, 42 U.S.C. 300gg(c);

(c) Have not attained sixty-five years of age; and

(d) Are not eligible for medical assistance under any mandatory categorically needy eligibility group; and

(10) Persons eligible for services described in subsection (3) of section 68-972.

Except as provided in section 68-972, eligibility shall be determined under this section using an income budgetary methodology that determines children's eligibility at no greater than two hundred percent of the Office of Management and Budget income poverty guideline and adult eligibility using adult income standards no greater than the applicable categorical eligibility standards established pursuant to state or federal law. The department shall determine eligibility under this section pursuant to such income budgetary methodology and subdivision (1)(q) of section 68-1713.

Source: Laws 1965, c. 397, § 5, p. 1278; Laws 1984, LB 1127, § 4; Laws 1988, LB 229, § 1; Laws 1995, LB 455, § 6; Laws 1996, LB 1044, § 323; Laws 1998, LB 1063, § 6; Laws 1999, LB 594, § 34; Laws 2001, LB 677, § 1; Laws 2002, Second Spec. Sess., LB 8, § 2; Laws 2003, LB 411, § 2; Laws 2005, LB 301, § 3;

R.S.Supp.,2005, § 68-1020; Laws 2006, LB 1248, § 15; Laws 2007, LB296, § 249; Laws 2007, LB351, § 3; Laws 2009, LB603, § 2; Laws 2012, LB599, § 3.

The adoption of an act of Congress to be passed in the future would be an unconstitutional attempt on the part of the Legislature to delegate legislative authority to Congress. By adopting the provisions of federal law, this section provides that caretaker relatives are eligible for medical assistance benefits. The Legislature may lawfully adopt by reference an existing law or regulation of another jurisdiction, including the United States. *Clemens v. Harvey*, 247 Neb. 77, 525 N.W.2d 185 (1994).

In order for a minor or an incompetent adult without a legal guardian to qualify for assistance under this section, the applicant's parent must be a legal resident of Nebraska, the applicant's legal residence in Nebraska must be established by a court, or the applicant must have left her parents' home while the parents were legal residents of Nebraska. *Gosney v. Department of Public Welfare*, 206 Neb. 137, 291 N.W.2d 708 (1980).

68-916 Medical assistance; application; assignment of rights; exception.

The application for medical assistance shall constitute an automatic assignment of the rights specified in this section to the department or its assigns effective from the date of eligibility for such assistance. The assignment shall include the rights of the applicant or recipient and also the rights of any other member of the assistance group for whom the applicant or recipient can legally make an assignment.

Pursuant to this section and subject to sections 68-921 to 68-925, the applicant or recipient shall assign to the department or its assigns any rights to medical care support available to him or her or to other members of the assistance group under an order of a court or administrative agency and any rights to pursue or receive payments from any third party liable to pay for the cost of medical care and services arising out of injury, disease, or disability of the applicant or recipient or other members of the assistance group which otherwise would be covered by medical assistance. Medicare benefits shall not be assigned pursuant to this section. Rights assigned to the department or its assigns under this section may be directly reimbursable to the department or its assigns by liable third parties, as provided by rule or regulation of the department, when prior notification of the assignment has been made to the liable third party.

Source: Laws 1984, LB 723, § 1; Laws 1988, LB 419, § 15; Laws 1989, LB 362, § 10; Laws 1996, LB 1044, § 326; Laws 1996, LB 1155, § 23; R.S.1943, (2003), § 68-1026; Laws 2006, LB 1248, § 16.

The statutory assignment to Department of Social Services under this section is subject to a valid hospital lien acquired under section 52-401 when the hospital lien exists before the

department obligates itself to pay, or does pay, medical assistance benefits under this section. *Ehlers v. Perry*, 242 Neb. 208, 494 N.W.2d 325 (1993).

68-917 Applicant or recipient; failure to cooperate; effect.

Refusal by the applicant or recipient specified in section 68-916 to cooperate in obtaining reimbursement for medical care or services provided to himself or herself or any other member of the assistance group renders the applicant or recipient ineligible for assistance. Ineligibility shall continue for so long as such person refuses to cooperate. Cooperation may be waived by the department upon a determination of the reasonable likelihood of physical or emotional harm to the applicant, recipient, or other member of the assistance group if the applicant or recipient were to cooperate. Eligibility shall continue for any individual who cannot legally assign his or her own rights and who would have been eligible for assistance but for the refusal by another person, legally able to assign such individual's rights, to cooperate as required by this section.

Source: Laws 1984, LB 723, § 2; Laws 1997, LB 307, § 108; R.S.1943, (2003), § 68-1027; Laws 2006, LB 1248, § 17.

68-918 Restoration of rights; when.

If the applicant or recipient or any member of the assistance group becomes ineligible for medical assistance, the department shall restore to him or her the rights assigned under section 68-916.

Source: Laws 1984, LB 723, § 3; Laws 1997, LB 307, § 109; R.S.1943, (2003), § 68-1028; Laws 2006, LB 1248, § 18.

68-919 Medical assistance recipient; liability; when; claim; procedure; department; powers; recovery of medical assistance reimbursement; procedure.

(1) The recipient of medical assistance under the medical assistance program shall be indebted to the department for the total amount paid for medical assistance on behalf of the recipient if:

(a) The recipient was fifty-five years of age or older at the time the medical assistance was provided; or

(b) The recipient resided in a medical institution and, at the time of institutionalization or application for medical assistance, whichever is later, the department determines that the recipient could not have reasonably been expected to be discharged and resume living at home. For purposes of this section, medical institution means a nursing facility, an intermediate care facility for persons with developmental disabilities, or an inpatient hospital.

(2) The debt accruing under subsection (1) of this section arises during the life of the recipient but shall be held in abeyance until the death of the recipient. Any such debt to the department that exists when the recipient dies shall be recovered only after the death of the recipient's spouse, if any, and only after the recipient is not survived by a child who either is under twenty-one years of age or is blind or totally and permanently disabled as defined by the Supplemental Security Income criteria. In recovering such debt, the department shall not foreclose on a lien on the home of the recipient (a) if a sibling of the recipient with an equity interest in the home has lawfully resided in the home for at least one year before the recipient's admission and has lived there continuously since the date of the recipient's admission or (b) while the home is the residence of an adult child who has lived in the recipient's home for at least two years immediately before the recipient was institutionalized, has lived there continuously since that time, and can establish to the satisfaction of the department that he or she provided care that delayed the recipient's admission.

(3) The debt shall include the total amount of medical assistance provided when the recipient was fifty-five years of age or older or during a period of institutionalization as described in subsection (1) of this section and shall not include interest.

(4)(a) This subsection applies to the fullest extent permitted by 42 U.S.C. 1396p, as such section existed on January 1, 2017. It is the intent of the Legislature that the debt specified in subsection (1) of this section be collected by the department before any portion of the estate of a recipient of medical assistance is enjoyed by or transferred to a person not specified in subsection (2) of this section as a result of the death of such recipient. The debt may be recovered from the estate of a recipient of medical assistance.

(b) For purposes of this section:

(i) Estate of a recipient of medical assistance means any real estate, personal property, or other asset in which the recipient had any legal title or interest at

the time of the recipient's death, to the extent of such interests. In furtherance and not in limitation of the foregoing, the estate of a recipient of medical assistance also includes:

(A) Assets to be transferred to a beneficiary described in section 77-2004 or 77-2005 in relation to the recipient through a revocable trust or other similar arrangement which has become irrevocable by reason of the recipient's death; and

(B) Notwithstanding anything to the contrary in subdivision (3) or (4) of section 68-923, assets conveyed or otherwise transferred to a survivor, an heir, an assignee, a beneficiary, or a devisee of the recipient of medical assistance through joint tenancy, tenancy in common, transfer on death deed, survivorship, conveyance of a remainder interest, retention of a life estate or of an estate for a period of time, living trust, or other arrangement by which value or possession is transferred to or realized by the beneficiary of the conveyance or transfer at or as a result of the recipient's death to the full extent authorized in 42 U.S.C. 1396p(b)(4)(B). Such other arrangements include insurance policies or annuities in which the recipient of medical assistance had at the time of death any incidents of ownership of the policy or annuity or the power to designate beneficiaries and any pension rights or completed retirement plans or accounts of the recipient. A completed retirement plan or account is one which because of the death of the recipient of medical assistance ceases to have elements of retirement relating to such recipient and under which one or more beneficiaries exist after such recipient's death; and

(ii) Estate of a recipient of medical assistance does not include:

(A) Insurance policies in proportion to the premiums and other payments to the insurance carrier that were paid by someone other than the recipient of medical assistance or the recipient's spouse;

(B) Insurance proceeds and accounts in institutions under federal supervision or supervision of the Department of Banking and Finance or Department of Insurance to the extent subject to a security interest where the secured party is not a related transferee as defined in section 68-990;

(C) Insurance proceeds, any trust account subject to the Burial Pre-Need Sale Act, or any limited lines funeral insurance policy to the extent used to pay for funeral, burial, or cremation expenses of the recipient of medical assistance;

(D) Conveyances of real estate made prior to August 24, 2017, that are subject to the grantor's retention of a life estate or an estate for a period of time; and

(E) Any pension rights or completed retirement plans to the extent that such rights or plans are exempt from claims for reimbursement of medical assistance under federal law.

(c) As to any interest in property created after August 24, 2017, and for as long as any portion of the debt arising under subsection (1) of this section remains unpaid, the death of the recipient of medical assistance shall not trigger a change in the rights to possession, enjoyment, access, income, or otherwise that the recipient had at the time of death and the personal representative of the recipient's estate is empowered to and shall exercise or enjoy such rights for the purpose of paying such debt, including, but not limited to, renting such property held as a life estate, severing joint tenancies, bringing partition actions, claiming equitable rights of contribution, or taking other actions

otherwise appropriate to effect the intent of this section. Such rights shall survive the death of the recipient of medical assistance and shall be administered, marshaled, and disposed of for the purposes of this section. In the event that a claim for reimbursement is made as to some, but not all, nonprobate transferees or assets, the party or owner against whom the claim is asserted may seek equitable contribution toward the claim from the other nonprobate transferees or assets in a court of applicable jurisdiction. Except as otherwise provided in this section and except for the right of the department to recover the debt from such interests in property, this subsection in and of itself does not create any rights in any other person or entity.

(d) Unless includable in the estate of a recipient of medical assistance pursuant to this section as it existed prior to August 24, 2017, an interest in real estate transferred to a related transferee as defined in section 68-990 and vested in such related transferee prior to August 24, 2017, shall not be part of the estate of the recipient of medical assistance unless required disclosures were not made at the time of application for medical assistance under section 68-989 or at the time of any review by the department of the recipient's eligibility for medical assistance.

(e) The department, upon application of the personal representative of an estate, any person otherwise authorized under the Nebraska Probate Code to act on behalf of a decedent, any person having an interest in assets of the decedent which are subject to this subsection, a successor trustee of a revocable trust or other similar arrangement which has become irrevocable by reason of the decedent's death, or any other person holding assets of the decedent described in this subsection, shall release some or all of the property of a decedent from the provisions of this subsection in cases in which the department determines that either there is no medical assistance reimbursement due and no application for medical assistance has been filed on behalf of the decedent or that there will be sufficient assets of the probate estate of the decedent to satisfy all such claims for medical assistance reimbursement. If there is no medical assistance reimbursement due and no application for medical assistance has been filed on behalf of the decedent, the department shall certify to the applicant that no reimbursement is due as expeditiously as reasonably possible but in no event more than sixty days after receipt of the application, the decedent's name and social security number, and, if the decedent was predeceased by a spouse, the name and social security number of such spouse. Failure of the department to timely make such certification shall subject the department to payment of the applicant's reasonable attorney's fees and costs in an action for mandamus filed in either Lancaster County or the county in which the probate action or inheritance tax proceeding is pending. The department shall annually report to the Legislature the amount and circumstances of such attorney's fees and costs paid. If the department determines that there is medical assistance reimbursement due or that an application for medical assistance has been filed on behalf of the decedent, the department shall mail notice thereof to the applicant within such sixty-day period. Notice stating that a demand for notice has been filed pursuant to subsection (3) of section 71-605 shall suffice for purposes of the notice requirement. Failure of the department to provide the required notice discharges the debt created under this section unless the department has previously filed a demand for notice under subsection (3) of section 71-605. An application under this subdivision shall be provided to the department in a delivery manner and

at an address designated by the department, which manner may include email. The department shall post the acceptable manner of delivery on its web site. Any application that fails to conform with such manner is void. The department shall not require, as part of the application, that an applicant submit information beyond what is needed to implement this subdivision. Notwithstanding the lack of an order by a court designating a trustee or successor trustee of a revocable trust or other similar arrangement which has become irrevocable by reason of the decedent's death as a person who may receive information in conjunction with applicable privacy law, such person shall have the authority of a personal representative with respect to the trust assets, including, but not limited to, the authority to seek and to obtain from the department information protected by applicable privacy law, and the department shall release the information requested to the trustee to the extent it is relevant to resolving issues relating to reimbursement of medical assistance or the administration thereof.

(f) In the event that the department does not seek to recover medical assistance reimbursement for a period of eighteen months after it is entitled to do so, the county attorney of the county in which the recipient of medical assistance last resided, or in the case of real estate, the county where the real estate is located, may seek the consent of the department to enforce the rights of the department. The department shall determine whether or not to grant such consent within sixty days after the consent is requested. If the department fails to make a determination within the sixty-day period, such consent shall be deemed to have been granted. The department may not unreasonably withhold consent to the bringing of such action. If the county attorney brings such an action, the county shall be entitled to such reasonable attorney's fees as determined by the court with jurisdiction of the action. The department shall give its full cooperation to such county attorney.

(g) An action for recovery of the debt created under subsection (1) of this section may be brought by the department against the estate of a recipient of medical assistance as defined in subdivision (4)(b) of this section at any time before five years after the last of the following events:

- (i) The death of the recipient of medical assistance;
- (ii) The death of the recipient's spouse, if applicable;
- (iii) The attainment of the age of twenty-one years by the youngest of the recipient's minor children, if applicable; or
- (iv) A determination that any adult child of the recipient is no longer blind or totally and permanently disabled as defined by the Supplemental Security Income criteria, if applicable.

(5) In any probate proceedings in which the department has filed a claim under this section, no additional evidence of foundation shall be required for the admission of the department's payment record supporting its claim if the payment record bears the seal of the department, is certified as a true copy, and bears the signature of an authorized representative of the department.

(6) The department may waive or compromise its claim, in whole or in part, if the department determines that enforcement of the claim would not be in the best interests of the state or would result in undue hardship as provided in rules and regulations of the department.

(7) Whenever the department has provided medical assistance because of sickness or injury to any person resulting from a third party's wrongful act or negligence and the person has recovered or may recover damages from such third party, to the fullest extent permitted by federal law and understandings entered into between the state and federal government, the department shall have the right to recover the medical assistance it paid from any amounts that the person has received or may receive from or on behalf of the third party. When, with the consent of the department, an action or claim is brought by the person alone and the person incurs or will incur a personal liability to pay attorney's fees and costs of litigation or costs incurred in pursuit of a claim, to the fullest extent permitted by federal law and understandings entered into between the state and federal government, the department's claim for reimbursement of the medical assistance provided to the person shall be reduced by twenty-five percent of the full amount of the judgment, award, or settlement, which the person may retain, though otherwise subject to applicable law including but not limited to eligibility criteria, and a pro rata share that represents the department's reasonable share of attorney's fees paid by the person and that portion of the costs of litigation or the costs incurred in pursuit of a claim determined by multiplying the amount of the costs of litigation or the costs incurred in pursuit of a claim by the ratio of the full amount of benefit expenditures made by the department to or on behalf of the person to the full amount of the judgment, award, or settlement. The department may not unreasonably withhold consent to the bringing of such action or claim. The department shall determine whether or not to grant such consent within thirty days after the consent is requested. If the department fails to make a determination within the thirty-day period, such consent shall be deemed to have been granted.

(8) The department may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 1994, LB 1224, § 39; Laws 1996, LB 1044, § 334; Laws 2001, LB 257, § 1; Laws 2004, LB 1005, § 7; R.S.Supp.,2004, § 68-1036.02; Laws 2006, LB 1248, § 19; Laws 2007, LB185, § 2; Laws 2013, LB23, § 13; Laws 2015, LB72, § 4; Laws 2017, LB268, § 14.

Cross References

Burial Pre-Need Sale Act, see section 12-1101.
Nebraska Probate Code, see section 30-2201.

The Department of Health and Human Services was entitled to summary judgment on its Medicaid estate recovery claim made pursuant to this section, where uncontroverted evidence showed that the decedent was 55 years of age or older when medical assistance benefits were provided, and was not survived by a spouse, a child under the age of 21, or a child who was blind or totally and permanently disabled, and where the department offered properly authenticated payment records as prescribed by subsection (4) of this section. In re Estate of Cushing, 283 Neb. 571, 810 N.W.2d 741 (2012).

Time limitations set forth in section 30-2485(a) applied to the Department of Health and Human Services' Medicaid estate recovery claim, because under this section, under which the claim was made, the indebtedness to the department arose during the lifetime of the recipient. In re Estate of Cushing, 283 Neb. 571, 810 N.W.2d 741 (2012).

The plain and unambiguous language of this section provides that reimbursement claims for medical expenses arise at or after

the death of the recipient. In re Estate of Tvrz, 260 Neb. 991, 620 N.W.2d 757 (2001).

Subsection (4) of this section clearly dispenses with foundation for the admission of the record, if properly certified. In re Estate of Reimers, 16 Neb. App. 610, 746 N.W.2d 724 (2008).

This section does not create any presumption that the amounts shown on the payment record of the Department of Health and Human Services are reimbursable by the recipient's estate-such must still be proved-and if the exhibit does not do so, then additional evidence is needed. In re Estate of Reimers, 16 Neb. App. 610, 746 N.W.2d 724 (2008).

A claim by the Department of Health and Human Services Finance and Support for reimbursement of medical assistance benefits pursuant to this section is one that necessarily falls within the provisions of subsection (b) of section 30-2485 as arising "at or after" the death of the decedent who is a recipient of those benefits. In re Estate of Tvrz, 9 Neb. App. 98, 608 N.W.2d 226 (2000).

68-920 Department; garnish employment income; when; limitation.

The department may garnish the wages, salary, or other employment income of a person for the costs of health services provided to a child who is eligible for medical assistance pursuant to the medical assistance program if:

- (1) The person is required by court or administrative order to provide health care coverage for the costs of such services; and
- (2) The person has received payment from a third party for the costs of such services but has not used the payment to reimburse either the other parent or guardian or the provider of such services.

The amount garnished shall be limited to the amount necessary to reimburse the department for its expenditures for the costs of such services under the medical assistance program. Any claim for current or past-due child support shall take priority over a claim for the costs of health services.

Source: Laws 1994, LB 1224, § 71; Laws 1996, LB 1044, § 335; R.S.1943, (2003), § 68-1036.03; Laws 2006, LB 1248, § 20.

68-921 Entitlement of spouse; terms, defined.

For purposes of sections 68-921 to 68-925:

- (1) Assets means property which is not exempt from consideration in determining eligibility for medical assistance under rules and regulations adopted and promulgated under section 68-922;
- (2) Community spouse monthly income allowance means the amount of income determined by the department in accordance with section 1924 of the federal Social Security Act, as amended, Public Law 100-360, 42 U.S.C. 1396r-5;
- (3) Community spouse resource allowance means the amount of assets determined in accordance with section 1924 of the federal Social Security Act, as amended, Public Law 100-360, 42 U.S.C. 1396r-5. For purposes of 42 U.S.C. 1396r-5(f)(2)(A)(i), the amount specified by the state shall be twelve thousand dollars;
- (4) Home and community-based services means services furnished under home and community-based waivers as defined in Title XIX of the federal Social Security Act, as amended, 42 U.S.C. 1396;
- (5) Qualified applicant means a person (a) who applies for medical assistance on or after July 9, 1988, (b) who is under care in a state-licensed hospital, a nursing facility, an intermediate care facility for persons with developmental disabilities, an assisted-living facility, or a center for the developmentally disabled, as such terms are defined in the Health Care Facility Licensure Act, or an adult family home certified by the department or is receiving home and community-based services, and (c) whose spouse is not under such care or receiving such services and is not applying for or receiving medical assistance;
- (6) Qualified recipient means a person (a) who has applied for medical assistance before July 9, 1988, and is eligible for such assistance, (b) who is under care in a facility certified to receive medical assistance funds or is receiving home and community-based services, and (c) whose spouse is not under such care or receiving such services and is not applying for or receiving medical assistance; and

(7) Spouse means the spouse of a qualified applicant or qualified recipient.

Source: Laws 1988, LB 419, § 1; Laws 1989, LB 362, § 11; Laws 1991, LB 244, § 1; Laws 1996, LB 1044, § 336; Laws 1997, LB 608, § 4; Laws 2000, LB 819, § 81; R.S.1943, (2003), § 68-1038; Laws 2006, LB 1248, § 21; Laws 2007, LB185, § 3; Laws 2007, LB296, § 250; Laws 2013, LB23, § 14.

Cross References

Health Care Facility Licensure Act, see section 71-401.

68-922 Amount of entitlement; department; rules and regulations.

For purposes of determining medical assistance eligibility and the right to and obligation of medical support pursuant to sections 68-716, 68-915, and 68-916, a spouse may retain (1) assets equivalent to the community spouse resource allowance and (2) an amount of income equivalent to the community spouse monthly income allowance.

The department shall administer this section in accordance with section 1924 of the Social Security Act, as amended, Public Law 100-360, 42 U.S.C. 1396r-5, and shall adopt and promulgate rules and regulations as necessary to implement and enforce sections 68-921 to 68-925.

Source: Laws 1988, LB 419, § 2; Laws 1989, LB 362, § 12; R.S.1943, (2003), § 68-1039; Laws 2006, LB 1248, § 22; Laws 2007, LB296, § 251.

68-923 Assets; eligibility for assistance; future medical support; considerations; subrogation.

If a portion of the aggregate assets is designated in accordance with section 68-924:

(1) Only the assets not designated for the spouse shall be considered in determining the eligibility of an applicant for medical assistance;

(2) In determining the eligibility of an applicant, the assets designated for the spouse shall not be taken into account and proof of adequate consideration for any assignment or transfer made as a result of the designation of assets shall not be required;

(3) The assets designated for the spouse shall not be considered to be available to an applicant or recipient for future medical support and the spouse shall have no duty of future medical support of the applicant or recipient from such assets;

(4) Recovery may not be made from the assets designated for the spouse for any amount paid for future medical assistance provided to the applicant or recipient; and

(5) Neither the department nor the state shall be subrogated to or assigned any future right of the applicant or recipient to medical support from the assets designated for the spouse.

Source: Laws 1988, LB 419, § 3; Laws 1989, LB 362, § 13; R.S.1943, (2003), § 68-1040; Laws 2006, LB 1248, § 23; Laws 2007, LB296, § 252.

68-924 Designation of assets; procedure.

A designation of assets pursuant to section 68-922 shall be evidenced by a written statement listing such assets and signed by the spouse. A copy of such statement shall be provided to the department at the time of application and shall designate assets owned as of the date of application. Failure to complete any assignments or transfers necessary to place the designated assets in sole ownership of the spouse within a reasonable time after the statement is signed as provided in rules and regulations adopted and promulgated under section 68-922 may render the applicant or recipient ineligible for assistance in accordance with such rules and regulations.

Source: Laws 1988, LB 419, § 5; Laws 1989, LB 362, § 14; R.S.1943, (2003), § 68-1042; Laws 2006, LB 1248, § 24; Laws 2007, LB296, § 253.

68-925 Department; furnish statement.

The department shall furnish to each qualified applicant for and each qualified recipient of medical assistance a clear and simple written statement explaining the provisions of section 68-922.

Source: Laws 1988, LB 419, § 6; Laws 1989, LB 362, § 15; Laws 1996, LB 1044, § 337; R.S.1943, (2003), § 68-1043; Laws 2006, LB 1248, § 25; Laws 2007, LB296, § 254.

68-926 Legislative findings.

The Legislature finds that (1) the department relies on health insurance and claims information from private insurers to ensure accuracy in processing state benefit program payments to providers and in verifying individual recipients' eligibility, (2) delay or refusal to provide such information causes unnecessary expenditures of state funds, (3) disclosure of such information to the department is permitted pursuant to the federal Health Insurance Portability and Accountability privacy rules under 45 C.F.R. part 164, and (4) for medical assistance program recipients who also have other insurance coverage, including coverage by licensed and self-funded insurers, the department is required by 42 U.S.C. 1396a(a)(25) to assure that licensed and self-funded insurers coordinate benefits with the program.

Source: Laws 2005, LB 589, § 1; R.S.Supp.,2005, § 68-10,100; Laws 2006, LB 1248, § 26; Laws 2007, LB296, § 255.

68-927 Terms, defined.

For purposes of sections 68-926 to 68-933:

(1) Coordinate benefits means:

(a) Provide to the department information regarding the licensed insurer's or self-funded insurer's existing coverage for an individual who is eligible for a state benefit program; and

(b) Meet payment obligations;

(2) Coverage information means health information possessed by a licensed insurer or self-funded insurer that is limited to the following information about an individual:

(a) Eligibility for coverage under a health plan;

(b) Coverage of health care under the health plan; or

(c) Benefits and payments associated with the health plan;

(3) Health plan means any policy of insurance issued by a licensed insurer or any employee benefit plan offered by a self-funded insurer that provides for payment to or on behalf of an individual as a result of an illness, disability, or injury or change in a health condition;

(4) Individual means a person covered by a state benefit program, including the medical assistance program, or a person applying for such coverage;

(5) Licensed insurer means any insurer, except a self-funded insurer, including a fraternal benefit society, producer, or other person licensed or required to be licensed, authorized or required to be authorized, or registered or required to be registered pursuant to the insurance laws of the state; and

(6) Self-funded insurer means any employer or union who or which provides a self-funded employee benefit plan.

Source: Laws 2005, LB 589, § 2; R.S.Supp.,2005, § 68-10,101; Laws 2006, LB 1248, § 27; Laws 2007, LB296, § 256.

68-928 Licensed insurer or self-funded insurer; provide coverage information.

(1) Except as provided in subsection (2) of this section, at the request of the department, a licensed insurer or a self-funded insurer shall provide coverage information to the department without an individual's authorization for purposes of:

(a) Determining an individual's eligibility for state benefit programs, including the medical assistance program; or

(b) Coordinating benefits with state benefit programs.

Such information shall be provided within thirty days after the date of request unless good cause is shown. Requests for coverage information shall specify individual recipients for whom information is being requested.

(2)(a) Coverage information requested pursuant to subsection (1) of this section regarding a limited benefit policy shall be limited to whether a specified individual has coverage and, if so, a description of that coverage, and such information shall be used solely for the purposes of subdivision (1)(a) of this section.

(b) For purposes of this section, limited benefit policy means a policy of insurance issued by a licensed insurer that consists only of one or more, or any combination of the following:

(i) Coverage only for accident or disability income insurance, or any combination thereof;

(ii) Coverage for specified disease or illness; or

(iii) Hospital indemnity or other fixed indemnity insurance.

Source: Laws 2005, LB 589, § 3; R.S.Supp.,2005, § 68-10,102; Laws 2006, LB 1248, § 28; Laws 2007, LB296, § 257.

68-929 Licensed insurer; violation.

Any violation of section 68-928 by a licensed insurer shall be subject to the Unfair Insurance Claims Settlement Practices Act.

Source: Laws 2005, LB 589, § 4; R.S.Supp.,2005, § 68-10,103; Laws 2006, LB 1248, § 29.

Cross References

Unfair Insurance Claims Settlement Practices Act, see section 44-1536.

68-930 Self-funded insurer; violation; civil penalty.

The department may impose and collect a civil penalty on a self-funded insurer who violates the requirements of section 68-928 if the department finds that the self-funded insurer:

- (1) Committed the violation flagrantly and in conscious disregard of the requirements; or
- (2) Has committed violations with such frequency as to indicate a general business practice to engage in that type of conduct.

The civil penalty shall not be more than one thousand dollars for each violation, not to exceed an aggregate penalty of thirty thousand dollars, unless the violation by the self-funded insurer was committed flagrantly and in conscious disregard of section 68-928, in which case the penalty shall not be more than fifteen thousand dollars for each violation, not to exceed an aggregate penalty of one hundred fifty thousand dollars.

Source: Laws 2005, LB 589, § 5; R.S.Supp.,2005, § 68-10,104; Laws 2006, LB 1248, § 30; Laws 2007, LB296, § 258.

68-931 Recovery; authorized.

The department is authorized to recover all amounts paid or to be paid to state benefit programs as a result of failure to coordinate benefits by a licensed insurer or a self-funded insurer.

Source: Laws 2005, LB 589, § 6; R.S.Supp.,2005, § 68-10,105; Laws 2006, LB 1248, § 31; Laws 2007, LB296, § 259.

68-932 Process for resolving violations; appeal.

The department shall establish a process by rule and regulation for resolving any violation by a self-funded insurer of section 68-928 and for assessing the financial penalties contained in section 68-930. Any appeal of an action by the department under such policies shall be in accordance with the Administrative Procedure Act.

Source: Laws 2005, LB 589, § 7; R.S.Supp.,2005, § 68-10,106; Laws 2006, LB 1248, § 32; Laws 2007, LB296, § 260.

Cross References

Administrative Procedure Act, see section 84-920.

68-933 Civil penalties; disposition.

All money collected as a civil penalty under section 68-929 or 68-930 shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2005, LB 589, § 8; R.S.Supp.,2005, § 68-10,107; Laws 2006, LB 1248, § 33.

68-934 False Medicaid Claims Act; act, how cited.

Sections 68-934 to 68-947 shall be known and may be cited as the False Medicaid Claims Act.

Source: Laws 1996, LB 1155, § 67; R.S.1943, (2003), § 68-1037.01; Laws 2004, LB 1084, § 1; R.S.Supp.,2004, § 68-1073; Laws 2006, LB 1248, § 34; Laws 2009, LB288, § 21.

68-935 Terms, defined.

For purposes of the False Medicaid Claims Act:

(1) Attorney General means the Attorney General, the office of the Attorney General, or a designee of the Attorney General;

(2) Claim means any request or demand, whether under a contract or otherwise, for money or property, and whether or not the state has title to the money or property, that:

(a) Is presented to an officer, employee, or agent of the state; or

(b) Is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the state's behalf or to advance a state program or interest, and if the state:

(i) Provides or has provided any portion of the money or property requested or demanded; or

(ii) Will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded;

(3) Good or service includes (a) any particular item, device, medical supply, or service claimed to have been provided to a recipient and listed in an itemized claim for payment and (b) any entry in the cost report, books of account, or other documents supporting such good or service;

(4)(a) Knowing and knowingly means that a person, with respect to information:

(i) Has actual knowledge of the information;

(ii) Acts in deliberate ignorance of the truth or falsity of the information; or

(iii) Acts in reckless disregard of the truth or falsity of the information.

(b) Acts committed in a knowing manner or committed knowingly shall not require proof of a specific intent to defraud;

(5) Material means having a natural tendency to influence or be capable of influencing the payment or receipt of money or property;

(6) Obligation means an established duty, whether or not fixed, arising from (a) an express or implied contractual, grantor-grantee, or licensor-licensee relationship, (b) a fee-based or similar relationship, (c) statute or rule or regulation, or (d) the retention of any overpayment;

(7) Person means any body politic or corporate, society, community, the public generally, individual, partnership, limited liability company, joint-stock company, or association; and

(8) Recipient means an individual who is eligible to receive goods or services for which payment may be made under the medical assistance program.

Source: Laws 1996, LB 1155, § 68; R.S.1943, (2003), § 68-1037.02; Laws 2004, LB 1084, § 2; R.S.Supp.,2004, § 68-1074; Laws 2006, LB 1248, § 35; Laws 2013, LB277, § 1.

68-936 Presentation of false medicaid claim; civil liability; violation of act; civil penalty; damages; costs and attorney's fees.

(1) A person presents a false medicaid claim and is subject to civil liability if such person:

(a) Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

(b) Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

(c) Conspires to commit a violation of the False Medicaid Claims Act;

(d) Has possession, custody, or control of property or money used, or to be used, by the state and knowingly delivers, or causes to be delivered, less than all of the money or property;

(e) Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the state and, intending to defraud the state, makes or delivers the receipt knowing that the information on the receipt is not true;

(f) Knowingly buys, or receives as a pledge of an obligation or debt, public property from any officer or employee of the state who may not lawfully sell or pledge such property; or

(g) Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the state or knowingly conceals, avoids, or decreases an obligation to pay or transmit money or property to the state.

(2) A person who commits a violation of the False Medicaid Claims Act is subject to, in addition to any other remedies that may be prescribed by law, a civil penalty of not more than ten thousand dollars. In addition to any civil penalty, any such person may be subject to damages in the amount of three times the amount of the false claim because of the act of that person.

(3) If the state is the prevailing party in an action under the False Medicaid Claims Act, the defendant, in addition to penalties and damages, shall pay the state's costs and attorney's fees for the civil action brought to recover penalties or damages under the act.

(4) Liability under this section is joint and several for any act committed by two or more persons.

Source: Laws 1996, LB 1155, § 69; Laws 1997, LB 307, § 110; R.S.1943, (2003), § 68-1037.03; Laws 2004, LB 1084, § 3; R.S.Supp.,2004, § 68-1075; Laws 2006, LB 1248, § 36; Laws 2013, LB277, § 2.

68-937 Failure to report.

A person violates the False Medicaid Claims Act, and is subject to civil liability as provided in section 68-936, if such person is a beneficiary of an inadvertent submission of a false medicaid claim to the state, and subsequently discovers and, knowing the claim is false, fails to report the claim to the department within sixty days of such discovery. The beneficiary is not obliged to make such a report to the department if more than six years have passed since submission of the claim.

Source: Laws 2004, LB 1084, § 4; R.S.Supp.,2004, § 68-1076; Laws 2006, LB 1248, § 37.

68-938 Charge, solicitation, acceptance, or receipt; unlawful; when.

A person violates the False Medicaid Claims Act, and a claim submitted with regard to a good or service is deemed to be false and subjects such person to civil liability as provided in section 68-936, if he or she, acting on behalf of a provider providing such good or service to a recipient under the medical assistance program, charges, solicits, accepts, or receives anything of value in addition to the amount legally payable under the medical assistance program in connection with a provision of such good or service knowing that such charge, solicitation, acceptance, or receipt is not legally payable.

Source: Laws 2004, LB 1084, § 5; R.S.Supp.,2004, § 68-1077; Laws 2006, LB 1248, § 38.

68-939 Records; duties; acts prohibited; liability; costs and attorney's fees.

(1) A person violates the False Medicaid Claims Act and is subject to civil liability as provided in section 68-936 and damages as provided in subsection (2) of this section if he or she:

(a) Having submitted a claim or received payment for a good or service under the medical assistance program, knowingly fails to maintain such records as are necessary to disclose fully the nature of all goods or services for which a claim was submitted or payment was received, or such records as are necessary to disclose fully all income and expenditures upon which rates of payment were based, for a period of at least six years after the date on which payment was received; or

(b) Knowingly destroys such records within six years from the date payment was received.

(2) A person who knowingly fails to maintain records or who knowingly destroys records within six years from the date payment for a claim was received shall be subject to damages in the amount of three times the amount of the claim submitted for which records were knowingly not maintained or knowingly destroyed.

(3) If the state is the prevailing party in an action under this section, the defendant, in addition to penalties and damages, shall pay the state's costs and attorney's fees for the civil action brought to recover penalties or damages under the act.

Source: Laws 2004, LB 1084, § 6; R.S.Supp.,2004, § 68-1078; Laws 2006, LB 1248, § 39.

68-940 Penalties or damages; considerations; liability; costs and attorney's fees.

(1) In determining the amount of any penalties or damages awarded under the False Medicaid Claims Act, the following shall be taken into account:

(a) The nature of claims and the circumstances under which they were presented;

(b) The degree of culpability and history of prior offenses of the person presenting the claims;

(c) Coordination of the total penalties and damages arising from the same claims, goods, or services, whether based on state or federal statute; and

(d) Such other matters as justice requires.

(2)(a) Any person who presents a false medicaid claim is subject to civil liability as provided in section 68-936, except when the court finds that:

(i) The person committing the violation of the False Medicaid Claims Act furnished officials of the state responsible for investigating violations of the act with all information known to such person about the violation within thirty days after the date on which the defendant first obtained the information;

(ii) Such person fully cooperated with any state investigation of such violation; and

(iii) At the time such person furnished the state with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under the act with respect to such violation and the person did not have actual knowledge of the existence of an investigation into such violation.

(b) The court may assess not more than two times the amount of the false medicaid claims submitted because of the action of a person coming within the exception under subdivision (2)(a) of this section, and such person is also liable for the state's costs and attorney's fees for a civil action brought to recover any penalty or damages.

(3) Amounts recovered under the False Medicaid Claims Act shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund, except that (a) amounts recovered for the state's costs and attorney's fees pursuant to subdivision (2)(b) of this section and sections 68-936 and 68-939 shall be remitted to the State Treasurer for credit to the State Medicaid Fraud Control Unit Cash Fund and (b) the State Treasurer shall distribute civil penalties in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1996, LB 1155, § 70; Laws 1997, LB 307, § 111; R.S.1943, (2003), § 68-1037.04; Laws 2004, LB 1084, § 7; R.S.Supp.,2004, § 68-1079; Laws 2006, LB 1248, § 40; Laws 2007, LB296, § 261; Laws 2009, LB288, § 22.

68-940.01 State Medicaid Fraud Control Unit Cash Fund; created; use; investment.

The State Medicaid Fraud Control Unit Cash Fund is created. The fund shall be maintained by the Department of Justice and administered by the Attorney General. The fund shall consist of any recovery for the state's costs and attorney's fees received pursuant to subdivision (2)(b) of section 68-940 and sections 68-936 and 68-939, except criminal penalties, whether such recovery is by way of verdict, judgment, compromise, or settlement in or out of court, or other final disposition of any case or controversy under such subdivision or

sections. Money in the fund shall be used to pay the salaries and related expenses of the Department of Justice for the state medicaid fraud control unit.

The State Treasurer shall transfer five hundred thousand dollars from the State Medicaid Fraud Control Unit Cash Fund to the General Fund on or before June 30, 2018, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2009, LB288, § 23; Laws 2017, LB331, § 35.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

68-941 Limitation of actions; burden of proof.

(1) A civil action under the False Medicaid Claims Act shall be brought within six years after the date the claim is discovered or should have been discovered by exercise of reasonable diligence and, in any event, no more than ten years after the date on which the violation of the act was committed.

(2) In an action brought under the act, the state shall prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

Source: Laws 1996, LB 1155, § 71; R.S.1943, (2003), § 68-1037.05; Laws 2004, LB 1084, § 8; R.S.Supp.,2004, § 68-1080; Laws 2006, LB 1248, § 41.

68-942 Investigation and prosecution.

(1) In any case involving allegations of civil violations or criminal offenses under the False Medicaid Claims Act, the Attorney General may take full charge of any investigation or advancement or prosecution of the case.

(2) The department shall cooperate with the state medicaid fraud control unit in conducting such investigations, civil actions, and criminal prosecutions and shall provide such information for such purposes as may be requested by the Attorney General.

Source: Laws 2004, LB 1084, § 9; R.S.Supp.,2004, § 68-1081; Laws 2006, LB 1248, § 42.

68-943 State medicaid fraud control unit; certification.

The Attorney General shall:

(1) Establish a state medicaid fraud control unit that meets the standards prescribed by 42 U.S.C. 1396b(q); and

(2) Apply to the Secretary of Health and Human Services for certification of the unit under 42 U.S.C. 1396b(q).

Source: Laws 2004, LB 1084, § 10; R.S.Supp.,2004, § 68-1082; Laws 2006, LB 1248, § 43.

68-944 State medicaid fraud control unit; powers and duties.

The state medicaid fraud control unit shall employ such attorneys, auditors, investigators, and other personnel as authorized by law to carry out the duties of the unit in an effective and efficient manner. The purpose of the state medicaid fraud control unit is to conduct a statewide program for the investigation and prosecution of medicaid fraud and violations of all applicable state laws relating to the providing of medical assistance and the activities of providers. The state medicaid fraud control unit may review and act on complaints of abuse and neglect of patients at health care facilities that receive payments under the medical assistance program and may provide for collection or referral for collection of overpayments made under the medical assistance program that are discovered by the unit.

Source: Laws 2004, LB 1084, § 11; R.S.Supp.,2004, § 68-1083; Laws 2006, LB 1248, § 44.

68-945 Attorney General; powers and duties.

In carrying out the duties and responsibilities under the False Medicaid Claims Act, the Attorney General may:

(1) Enter upon the premises of any provider participating in the medical assistance program (a) to examine all accounts and records that are relevant in determining the existence of fraud in the medical assistance program, (b) to investigate alleged abuse or neglect of patients, or (c) to investigate alleged misappropriation of patients' private funds. The accounts or records of a nonmedicaid patient may not be reviewed by, or turned over to, the Attorney General without the patient's written consent or a court order;

(2) Subpoena witnesses or materials, including medical records relating to recipients, within or outside the state and, through any duly designated employee, administer oaths and affirmations and collect evidence for possible use in either civil or criminal judicial proceedings;

(3) Request and receive the assistance of any prosecutor or law enforcement agency in the investigation and prosecution of any violation of this section; and

(4) Refer to the department for collection each instance of overpayment to a provider under the medical assistance program which is discovered during the course of an investigation.

Source: Laws 2004, LB 1084, § 12; R.S.Supp.,2004, § 68-1084; Laws 2006, LB 1248, § 45.

68-946 Attorney General; access to records.

(1) Notwithstanding any other provision of law, the Attorney General, upon reasonable request, shall have full access to all records held by a provider, or by any other person on his or her behalf, that are relevant to the determination of (a) the existence of civil violations or criminal offenses under the False Medicaid Claims Act or related offenses, (b) the existence of patient abuse, mistreatment, or neglect, or (c) the theft of patient funds.

(2) In examining such records, the Attorney General shall safeguard the privacy rights of recipients, avoiding unnecessary disclosure of personal information concerning named recipients. The Attorney General may transmit such information as he or she deems appropriate to the department and to other agencies concerned with the regulation of health care facilities or health professionals.

(3) No person holding such records may refuse to provide the Attorney General access to such records for the purposes described in the act on the basis that release would violate (a) a recipient's right of privacy, (b) a recipient's privilege against disclosure or use, or (c) any professional or other privilege or right.

Source: Laws 2004, LB 1084, § 13; R.S.Supp.,2004, § 68-1085; Laws 2006, LB 1248, § 46.

68-947 Contempt of court.

Any person who, after being ordered by a court to comply with a subpoena issued under the False Medicaid Claims Act, fails in whole or in part to testify or to produce evidence, documentary or otherwise, shall be in contempt of court as if the failure was committed in the presence of the court. The court may assess a fine of not less than one hundred dollars nor more than one thousand dollars for each day such person fails to comply. No person shall be found to be in contempt of court nor shall any fine be assessed if compliance with such subpoena violates such person's right against self-incrimination.

Source: Laws 2004, LB 1084, § 14; R.S.Supp.,2004, § 68-1086; Laws 2006, LB 1248, § 47.

68-948 Repealed. Laws 2017, LB644, § 21.

68-949 Medical assistance program; legislative intent; department; duties.

(1) It is the intent of the Legislature that the department implement reforms to the medical assistance program such as those contained in the Medicaid Reform Plan, including (a) an incremental expansion of home and community-based services for aged persons and persons with disabilities consistent with such plan, (b) an increase in care coordination or disease management initiatives to better manage medical assistance expenditures on behalf of high-cost recipients with multiple or chronic medical conditions, and (c) other reforms as deemed necessary and appropriate by the department, in consultation with the committee.

(2) The department shall develop recommendations based on a comprehensive analysis of various options available to the state under applicable federal law for the provision of medical assistance to persons with disabilities who are employed, including persons with a medically improved disability, to enhance and replace current eligibility provisions contained in subdivision (8) of section 68-915.

(3) The department shall develop recommendations for further modification or replacement of the defined benefit structure of the medical assistance program. Such recommendations shall be consistent with the public policy in section 68-905 and shall consider the needs and resources of low-income Nebraska residents who are eligible or may become eligible for medical assistance, the experience and outcomes of other states that have developed and implemented such changes, and other relevant factors as determined by the department.

Source: Laws 2006, LB 1248, § 49; Laws 2007, LB296, § 263; Laws 2008, LB928, § 16; Laws 2017, LB417, § 9; Laws 2017, LB644, § 17.

68-950 Medicaid Prescription Drug Act, how cited.

Sections 68-950 to 68-956 shall be known and may be cited as the Medicaid Prescription Drug Act.

Source: Laws 2008, LB830, § 2.

68-951 Purpose of act.

The purpose of the Medicaid Prescription Drug Act is to provide appropriate pharmaceutical care to medicaid recipients in a cost-effective manner by requiring the establishment of a preferred drug list and other activities as prescribed. The preferred drug list and other activities mandated by the act shall not be construed to replace, prohibit, or limit other lawful activities of the department not specifically permitted or required by the act.

Source: Laws 2008, LB830, § 3.

68-952 Terms, defined.

For purposes of the Medicaid Prescription Drug Act:

(1) Labeler means a person or entity that repackages prescription drugs for retail sale and has a labeler code from the federal Food and Drug Administration under 21 C.F.R. 207.20, as such regulation existed on January 1, 2008;

(2) Manufacturer means a manufacturer of prescription drugs as defined in 42 U.S.C. 1396r-8(k)(5), as such section existed on January 1, 2008, including a subsidiary or affiliate of such manufacturer;

(3) Multistate purchasing pool means an entity formed by an agreement between two or more states to negotiate for supplemental rebates on prescription drugs;

(4) Pharmacy benefit manager means a person or entity that negotiates prescription drug price and rebate arrangements with manufacturers or labelers;

(5) Preferred drug list means a list of prescription drugs that may be prescribed for medicaid recipients without prior authorization by the department; and

(6) Prescription drug has the definition found in section 38-2841.

Source: Laws 2008, LB830, § 4.

68-953 Preferred drug list; department; establish and maintain; pharmaceutical and therapeutics committee; members; expenses.

(1) No later than July 1, 2010, the department shall establish and maintain a preferred drug list for the medical assistance program. The department shall establish a pharmaceutical and therapeutics committee to advise the department on all matters relating to the establishment and maintenance of such list.

(2) The pharmaceutical and therapeutics committee shall include at least fifteen but no more than twenty members. The committee shall consist of at least (a) eight physicians, (b) four pharmacists, (c) a university professor of pharmacy or a person with a doctoral degree in pharmacology, and (d) two public members. No more than twenty-five percent of the committee shall be state employees.

(3) The physician members of the committee, so far as practicable, shall include physicians practicing in the areas of (a) family medicine, (b) internal

medicine, (c) pediatrics, (d) cardiology, (e) psychiatry or neurology, (f) obstetrics or gynecology, (g) endocrinology, and (h) oncology.

(4) Members of the committee shall submit conflict of interest disclosure statements to the department and shall have an ongoing duty to disclose conflicts of interest not included in the original disclosure.

(5) The committee shall elect a chairperson and a vice-chairperson from among its members. Members of the committee shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(6) The department, in consultation with the committee, shall adopt and publish policies and procedures relating to the preferred drug list, including (a) guidelines for the presentation and review of drugs for inclusion on the preferred drug list, (b) the manner and frequency of audits of the preferred drug list for appropriateness of patient care and cost effectiveness, (c) an appeals process for the resolution of disputes, and (d) such other policies and procedures as the department deems necessary and appropriate.

Source: Laws 2008, LB830, § 5.

68-954 Preferred drug list; considerations; availability of list.

(1) The department and the pharmaceutical and therapeutics committee shall consider all therapeutic classes of prescription drugs for inclusion on the preferred drug list, except that antidepressant, antipsychotic, and anticonvulsant prescription drugs shall not be subject to consideration for inclusion on the preferred drug list.

(2)(a) The department shall include a prescription drug on the preferred drug list if the prescription drug is therapeutically equivalent to or superior to a prescription drug on the list and the net cost of the new prescription drug is equal to or less than the net cost of the listed drug, after consideration of applicable rebates or discounts negotiated by the department.

(b) If the department finds that two or more prescription drugs under consideration for inclusion on the preferred drug list are therapeutically equivalent, the department shall include the more cost-effective prescription drug or drugs on the preferred drug list, after consideration of applicable rebates or discounts negotiated by the department.

(3) The department shall maintain an updated preferred drug list in electronic format and shall make the list available to the public on the department's Internet web site.

Source: Laws 2008, LB830, § 6.

68-955 Prescription of drug not on preferred drug list; conditions.

(1) A health care provider may prescribe a prescription drug not on the preferred drug list to a medicaid recipient if (a) the prescription drug is medically necessary, (b)(i) the provider certifies that the preferred drug has not been therapeutically effective, or with reasonable certainty is not expected to be therapeutically effective, in treating the recipient's condition or (ii) the preferred drug causes or is reasonably expected to cause adverse or harmful reactions in the recipient, and (c) the department authorizes coverage for the prescription drug prior to the dispensing of the drug. The department shall respond to a prior authorization request no later than twenty-four hours after receiving such request.

(2) A health care provider may prescribe a prescription drug not on the preferred drug list to a medicaid recipient without prior authorization by the department if the provider certifies that (a) the recipient is achieving therapeutic success with a course of antidepressant, antipsychotic, or anticonvulsant medication or medication for human immunodeficiency virus, multiple sclerosis, epilepsy, cancer, or immunosuppressant therapy or (b) the recipient has experienced a prior therapeutic failure with a medication.

Source: Laws 2008, LB830, § 7.

68-956 Department; duties.

The department shall: (1) Enter into a multistate purchasing pool; (2) negotiate directly with manufacturers or labelers; or (3) contract with a pharmacy benefit manager for negotiated discounts or rebates for all prescription drugs under the medical assistance program in order to achieve the lowest available price for such drugs under such program.

Source: Laws 2008, LB830, § 8.

68-957 Repealed. Laws 2017, LB4, § 1.

68-958 Repealed. Laws 2017, LB4, § 1.

68-959 Repealed. Laws 2017, LB4, § 1.

68-960 Repealed. Laws 2017, LB4, § 1.

68-961 Repealed. Laws 2017, LB4, § 1.

68-962 Autism Treatment Program Act; act, how cited.

Sections 68-962 to 68-966 shall be known and may be cited as the Autism Treatment Program Act.

Source: Laws 2007, LB482, § 1; R.S.1943, (2008), § 85-1,138; Laws 2009, LB27, § 2.

68-963 Purpose of Autism Treatment Program Act.

The purpose of the Autism Treatment Program Act is to provide for the development and administration of a waiver or an amendment to an existing waiver under the medical assistance program established in section 68-903.

Source: Laws 2007, LB482, § 2; R.S.1943, (2008), § 85-1,139; Laws 2009, LB27, § 3.

68-964 Autism Treatment Program; created; administration; funding.

The Autism Treatment Program is created. The program shall be administered by the department.

Source: Laws 2007, LB482, § 3; R.S.1943, (2008), § 85-1,140; Laws 2009, LB27, § 4.

68-965 Autism Treatment Program Cash Fund; created; use; investment.

(1) The Autism Treatment Program Cash Fund is created. The fund shall include revenue received from gifts, grants, bequests, donations, other similar donation arrangements, or other contributions from public or private sources.

The department shall administer the fund. The fund shall be used as the state's matching share for the waiver established under section 68-966 and for expenses incurred in the administration of the Autism Treatment Program. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The program shall utilize private funds deposited in the fund. No donations from a provider of services under Title XIX of the federal Social Security Act shall be deposited into the fund.

Source: Laws 2007, LB482, § 4; R.S.1943, (2008), § 85-1,141; Laws 2009, LB27, § 5; Laws 2012, LB969, § 8.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

68-966 Department; apply for medical assistance program waiver or amendment; legislative intent.

(1) The department shall apply for a waiver or an amendment to an existing waiver under the medical assistance program established in section 68-903 for the purpose of providing medical assistance for intensive early intervention services based on behavioral principles for children with a medical diagnosis of an autism spectrum disorder or an educational verification of autism. Such waiver shall not be construed to create an entitlement to services provided under such waiver.

(2) It is the intent of the Legislature that such waiver (a) require means testing for and cost-sharing by recipient families, (b) limit eligibility only to children for whom such services have been initiated prior to the age of nine years, (c) limit the number of children served according to available funding, (d) require demonstrated progress toward the attainment of treatment goals as a condition for continued receipt of medical assistance benefits for such treatment, (e) be developed in consultation with the Health and Human Services Committee of the Legislature and the federal Centers for Medicare and Medicaid Services and with the input of parents and families of children with autism spectrum disorders and organizations advocating on behalf of such persons, and (f) be submitted to the federal Centers for Medicare and Medicaid Services as soon as practicable, but no later than September 1, 2009.

Source: Laws 2007, LB482, § 5; R.S.1943, (2008), § 85-1,142; Laws 2009, LB27, § 6.

68-967 Comprehensive treatment of pediatric feeding disorders; amendment to state medicaid plan; department; duties.

(1) On or before July 1, 2010, the Department of Health and Human Services shall submit an application to the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services amending the state medicaid plan to provide for medicaid payments for the comprehensive treatment of pediatric feeding disorders through interdisciplinary treatment.

(2) For purposes of this section, interdisciplinary treatment means the collaboration of medicine, psychology, nutrition science, speech therapy, occupational therapy, social work, and other appropriate medical and behavioral disciplines in an integrated program.

(3) This section terminates on January 1, 2015, unless extended by action of the Legislature.

Source: Laws 2009, LB342, § 2.
Termination date January 1, 2015.

68-968 School-based health centers; School Health Center Advisory Council; members.

(1) To ensure that the interests of the school district, community, and health care provider are reflected within the policies, procedures, and scope of services of school-based health centers, each school district shall establish a School Health Center Advisory Council for each school in the district hosting a school-based health center.

(2) The School Health Center Advisory Council shall include:

(a) At least one representative of the school administration or school district administration;

(b) At least one representative of the sponsoring facility; and

(c) At least one parent recommended by a school administrator or school district administrator and approved by a majority vote of the school board. Any parent serving on a School Health Center Advisory Council shall have at least one child enrolled in the school through which the school-based health center is organized.

(3) If another institution or organization sponsors the school-based health center, at least one representative of each sponsoring institution or organization shall be included on the School Health Center Advisory Council.

(4) School Health Center Advisory Councils may also include students enrolled in the school district through which the school-based health center is organized. Any such students must be appointed by a school administrator or school district administrator.

Source: Laws 2010, LB1106, § 4.

68-969 Amendment to medicaid state plan or waiver; children eligible for medicaid and CHIP; treatment for pregnant women; department; duties.

(1) On or before July 1, 2010, the department shall submit an application to the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services, amending the medicaid state plan or seeking a waiver thereto to provide for utilization of money to allow for payments for treatment for children who are lawfully residing in the United States and who are otherwise eligible for medicaid and CHIP pursuant to the federal Children’s Health Insurance Program Reauthorization Act of 2009, Public Law 111-3, as such act existed on January 1, 2010, and for treatment for pregnant women who are lawfully residing in the United States and who are otherwise eligible for medicaid pursuant to the federal Children’s Health Insurance Program Reauthorization Act of 2009, Public Law 111-3, as such act existed on January 1, 2010.

(2) For purposes of this section, (a) CHIP means the Children’s Health Insurance Program established pursuant to 42 U.S.C. 1397aa et seq., and (b)

medicaid means the program for medical assistance established under 42 U.S.C. 1396 et seq., as such sections existed on January 1, 2010.

Source: Laws 2010, LB1106, § 5.

68-970 Nebraska Regional Poison Center; legislative findings.

The Legislature finds that:

(1) The Nebraska Regional Poison Center funded through the University of Nebraska Medical Center Cash Fund provides a valuable service to Nebraska;

(2) The center receives over seventeen thousand calls annually, seventy-two percent of the calls involve children, and over twenty-seven percent of the calls relate to children in families whose annual household income is at or below two hundred percent of the federal poverty level;

(3) The operation of the center has resulted in over ninety percent of the calls regarding a child under six years of age being handled in a manner such that the child was able to remain at home and the child did not have to visit an emergency room or use 911 or emergency medical services; and

(4) The operation of the center results in a cost savings of one hundred seventy-five dollars per call in 1996 dollars.

Source: Laws 2011, LB525, § 2.

68-971 Amendment to medicaid state plan or waiver; Nebraska Regional Poison Center; payments; use; department; duties; University of Nebraska Medical Center; report.

(1) On or before January 1, 2012, the department shall submit an application to the federal Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services to amend the medicaid state plan or seek a waiver to provide for utilization of the unused administrative cap to allow for payments to the Nebraska Regional Poison Center funded through the University of Nebraska Medical Center Cash Fund to help offset the cost for treatment of children who are eligible for assistance under the medical assistance program and the Children's Health Insurance Program established pursuant to 42 U.S.C. 1397aa et seq., pursuant to the federal Children's Health Insurance Program Reauthorization Act of 2009, Public Law 111-3, as such act existed on January 1, 2010.

(2) Upon approval of the amendment to the medicaid state plan or the granting of the waiver, the University of Nebraska Medical Center shall transfer an amount, not to exceed two hundred fifty thousand dollars, to the Health and Human Services Cash Fund for the Nebraska Department of Health and Human Services to meet the state match to maximize the use of the unused administrative cap money. At the time the department receives the transferred amount or any portion thereof and the corollary federal funds, the department shall transfer the combined funds to the University of Nebraska Medical Center Cash Fund for operation of the Nebraska Regional Poison Center. If no amendment is approved nor waiver granted or if less than two hundred fifty thousand dollars is needed for the match, then the University of Nebraska Medical Center may use the remaining state appropriation for the operation of the Nebraska Regional Poison Center.

(3) The University of Nebraska Medical Center shall report electronically to the Legislative Fiscal Analyst on or before October 1 of every year the amount

transferred to the department in the prior fiscal year and the amount of matching funds received under this section for the Nebraska Regional Poison Center in the prior fiscal year.

Source: Laws 2011, LB525, § 3; Laws 2012, LB782, § 94.

68-972 Prenatal care; legislative findings; creation of separate program; benefits provided; department; submit state plan amendment or waiver; eligibility.

(1) The Legislature finds that:

(a) Title XXI of the federal Social Security Act, as amended, and the rules and regulations promulgated pursuant thereto, authorize the State Children's Health Insurance Program to assist state efforts to initiate and expand provisions of child health assistance to uninsured, low-income children;

(b) As defined in Title XXI of the federal Social Security Act, as amended, and the rules and regulations promulgated pursuant thereto, child means an individual under the age of nineteen years, including any period of time from conception to birth, up to age nineteen years;

(c) Pursuant to Title XXI of the federal Social Security Act, as amended, and the rules and regulations promulgated pursuant thereto, eligibility can only be conferred to a targeted low-income child, including an unborn child, under a separate child health program;

(d) Under Title XXI of the federal Social Security Act, as amended, and the rules and regulations promulgated pursuant thereto, child health assistance is available to benefit unborn children independent of the mother's eligibility and immigration status;

(e) Under Title XXI of the federal Social Security Act, as amended, and the rules and regulations promulgated pursuant thereto, child health assistance expressly includes prenatal care that connects to the health of the unborn child;

(f) Prenatal care has been clearly shown to reduce the likelihood of premature delivery or low birth weight, both of which are associated with a wide range of congenital disabilities as well as infant mortality, and such care can detect a great number of serious and even life-threatening disabilities, many of which can now be successfully treated in utero;

(g) Ensuring prenatal care for more children will significantly help reduce infant mortality and morbidity rates and will spare many infants from the burden of congenital disabilities and reduce the cost of treating those congenital disabilities after birth;

(h) It is well established that access to prenatal care can improve health outcomes during infancy as well as over a child's life. Since healthy babies and children require less medical care than babies and children with health problems, provision of prenatal care will result in lower medical expenditures for the affected children in the long run; and

(i) Adopting federal law to provide for medical services related to unborn children before birth will result in healthier infants, better long-term child growth and development, and ultimate cost savings to the state through reduced expenditures for high cost neonatal and potential long-term medical rehabilitation.

(2) Such coverage shall be implemented through the creation of a separate program as allowed under Title XXI of the federal Social Security Act, as amended, and 42 C.F.R. 457.10, solely for the unborn children of mothers who are ineligible for coverage under Title XIX of the federal Social Security Act. All other aspects of the medical assistance program relating to the State Children's Health Insurance Program remain a medicaid expansion program as defined in 42 C.F.R. 457.10.

(3) The benefits provided pursuant to this subsection, unless the recipient qualifies for coverage under Title XIX of the federal Social Security Act, as amended, shall be prenatal care and pregnancy-related services connected to the health of the unborn child, including: (a) Professional fees for labor and delivery, including live birth, fetal death, miscarriage, and ectopic pregnancy; (b) pharmaceuticals and prescription vitamins; (c) outpatient hospital care; (d) radiology, ultrasound, and other necessary imaging; (e) necessary laboratory testing; (f) hospital costs related to labor and delivery; (g) services related to conditions that could complicate the pregnancy, including those for diagnosis or treatment of illness or medical conditions that threaten the carrying of the unborn child to full term or the safe delivery of the unborn child; and (h) other pregnancy-related services approved by the department. Services not covered under this subsection include medical issues separate to the mother and unrelated to pregnancy.

(4) The department shall receive the state and federal funds appropriated or provided for benefits provided pursuant to this section. Within thirty days after July 19, 2012, the department shall submit a state plan amendment or waiver for approval by the federal Centers for Medicare and Medicaid Services to provide coverage under the medical assistance program to persons eligible under this section.

(5) Eligibility shall be determined under this section using an income budgetary methodology that determines children's eligibility at no greater than one hundred eighty-five percent of the Office of Management and Budget income poverty guideline.

Source: Laws 2012, LB599, § 4.

68-973 Improper payments; postpayment reimbursement; legislative findings.

The Legislature finds that the medical assistance program would benefit from increased efforts to (1) prevent improper payments to service providers, including, but not limited to, enforcement of eligibility criteria for recipients of benefits, enforcement of enrollment criteria for providers of benefits, determination of third-party liability for benefits, review of claims for benefits prior to payment, and identification of the extent and cause of improper payment, (2) identify and recoup improper payments, including, but not limited to, identification and investigation of questionable payments for benefits, administrative recoupment of payments for benefits, and referral of cases of fraud to the state medicaid fraud control unit for prosecution, and (3) collect postpayment reimbursement, including, but not limited to, maximizing prescribed drug rebates and maximizing recoveries from estates for paid benefits.

Source: Laws 2012, LB541, § 2.

68-974 Recovery audit contractors; contracts; contents; duties; health insurance premium assistance payment program; contract; department; powers and duties; form of records authorized; appeal; report.

(1) The department shall contract with one or more recovery audit contractors to promote the integrity of the medical assistance program and to assist with cost-containment efforts and recovery audits. The contract or contracts shall include services for (a) cost-avoidance through identification of third-party liability, (b) cost recovery of third-party liability through postpayment reimbursement, (c) casualty recovery of payments by identifying and recovering costs for claims that were the result of an accident or neglect and payable by a casualty insurer, and (d) reviews of claims submitted by providers of services or other individuals furnishing items and services for which payment has been made to determine whether providers have been underpaid or overpaid, and to take actions to recover any overpayments identified or make payment for any underpayment identified.

(2) Notwithstanding any other provision of law, all recovery audit contractors retained by the department when conducting a recovery audit shall:

- (a) Review claims within two years from the date of the payment;
- (b) Send a determination letter concluding an audit within sixty days after receipt of all requested material from a provider;
- (c) In any records request to a provider, furnish information sufficient for the provider to identify the patient, procedure, or location;
- (d) Develop and implement with the department a procedure in which an improper payment identified by an audit may be resubmitted as a claims adjustment;
- (e) Utilize a licensed health care professional from the area of practice being audited to establish relevant audit methodology consistent with established practice guidelines, standards of care, and state-issued medicaid provider handbooks;
- (f) Provide a written notification and explanation of an adverse determination that includes the reason for the adverse determination, the medical criteria on which the adverse determination was based, an explanation of the provider's appeal rights, and, if applicable, the appropriate procedure to submit a claims adjustment in accordance with subdivision (2)(d) of this section; and
- (g) Schedule any onsite audits with advance notice of not less than ten business days and make a good faith effort to establish a mutually agreed upon time and date for the onsite audit.

(3) The department shall exclude the following from the scope of review of recovery audit contractors: (a) Claims processed or paid through a capitated medicaid managed care program; and (b) any claims that are currently being audited or that have already been audited by the recovery audit contractor or currently being audited by another entity. No payment shall be recovered in a medical necessity review in which the provider has obtained prior authorization for the service and the service was performed as authorized.

(4) The department shall contract with one or more persons to support a health insurance premium assistance payment program.

(5) The department may enter into any other contracts deemed to increase the efforts to promote the integrity of the medical assistance program.

(6) Contracts entered into under the authority of this section may be on a contingent fee basis. Contracts entered into on a contingent fee basis shall provide that contingent fee payments are based upon amounts recovered, not amounts identified. Whether the contract is a contingent fee contract or otherwise, the contractor shall not recover overpayments by the department until all appeals have been completed unless there is a credible allegation of fraudulent activity by the provider, the contractor has referred the claims to the department for investigation, and an investigation has commenced. In that event, the contractor may recover overpayment prior to the conclusion of the appeals process. In any contract between the department and a recovery audit contractor, the payment or fee provided for identification of overpayments shall be the same provided for identification of underpayments. Contracts shall be in compliance with federal law and regulations when pertinent, including a limit on contingent fees of no more than twelve and one-half percent of amounts recovered, and initial contracts shall be entered into as soon as practicable under such federal law and regulations.

(7) All amounts recovered and savings generated as a result of this section shall be returned to the medical assistance program.

(8) Records requests made by a recovery audit contractor in any one-hundred-eighty-day period shall be limited to not more than five percent of the number of claims filed by the provider for the specific service being reviewed, not to exceed two hundred records. The contractor shall allow a provider no less than forty-five days to respond to and comply with a record request. If the contractor can demonstrate a significant provider error rate relative to an audit of records, the contractor may make a request to the department to initiate an additional records request regarding the subject under review for the purpose of further review and validation. The contractor shall not make the request until the time period for the appeals process has expired.

(9) On an annual basis, the department shall require the recovery audit contractor to compile and publish on the department's Internet web site metrics related to the performance of each recovery audit contractor. Such metrics shall include: (a) The number and type of issues reviewed; (b) the number of medical records requested; (c) the number of overpayments and the aggregate dollar amounts associated with the overpayments identified by the contractor; (d) the number of underpayments and the aggregate dollar amounts associated with the identified underpayments; (e) the duration of audits from initiation to time of completion; (f) the number of adverse determinations and the overturn rating of those determinations in the appeal process; (g) the number of appeals filed by providers and the disposition status of such appeals; (h) the contractor's compensation structure and dollar amount of compensation; and (i) a copy of the department's contract with the recovery audit contractor.

(10) The recovery audit contractor, in conjunction with the department, shall perform educational and training programs annually for providers that encompass a summary of audit results, a description of common issues, problems, and mistakes identified through audits and reviews, and opportunities for improvement.

(11) Providers shall be allowed to submit records requested as a result of an audit in electronic format which shall include compact disc, digital versatile

disc, or other electronic format deemed appropriate by the department or via facsimile transmission, at the request of the provider.

(12)(a) A provider shall have the right to appeal a determination made by the recovery audit contractor.

(b) The contractor shall establish an informal consultation process to be utilized prior to the issuance of a final determination. Within thirty days after receipt of notification of a preliminary finding from the contractor, the provider may request an informal consultation with the contractor to discuss and attempt to resolve the findings or portion of such findings in the preliminary findings letter. The request shall be made to the contractor. The consultation shall occur within thirty days after the provider’s request for informal consultation, unless otherwise agreed to by both parties.

(c) Within thirty days after notification of an adverse determination, a provider may request an administrative appeal of the adverse determination as set forth in the Administrative Procedure Act.

(13) The department shall by December 1 of each year report to the Legislature the status of the contracts, including the parties, the programs and issues addressed, the estimated cost recovery, and the savings accrued as a result of the contracts. Such report shall be filed electronically.

(14) For purposes of this section:

(a) Adverse determination means any decision rendered by the recovery audit contractor that results in a payment to a provider for a claim for service being reduced or rescinded;

(b) Person means bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, limited liability companies, joint-stock companies, and associations; and

(c) Recovery audit contractor means private entities with which the department contracts to audit claims for medical assistance, identify underpayments and overpayments, and recoup overpayments.

Source: Laws 2012, LB541, § 3; Laws 2015, LB315, § 1.

Cross References

Administrative Procedure Act, see section 84-920.

68-975 Department; apply for amendment to medicaid state plan; multisystemic therapy for youth.

(1) On or before May 1, 2016, the department shall submit an application to the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services to amend the medicaid state plan to provide for utilization of money to allow for payments for multisystemic therapy for youth who are eligible for the medical assistance program and CHIP pursuant to the federal Children’s Health Insurance Program Reauthorization Act of 2009, Public Law 111-3, as such act existed on January 1, 2015.

(2) For purposes of this section, CHIP means the Children’s Health Insurance Program established pursuant to 42 U.S.C. 1397aa et seq., as such section existed on January 1, 2015.

Source: Laws 2015, LB500, § 2.

68-976 Provider with high categorical risk level; fingerprint-based criminal history record information check; Nebraska State Patrol; issue report; cost; department; powers and duties.

(1)(a) Any provider with a high categorical risk level as determined by the Centers for Medicare and Medicaid Services or the medicaid assistance program established pursuant to the Medical Assistance Act shall be subject to a fingerprint-based criminal history record information check.

(b) Such provider who is an individual, or any individual with at least a five percent direct or indirect ownership interest in any such provider, shall provide his or her fingerprints to the Nebraska State Patrol. The Nebraska State Patrol shall undertake a search for fingerprint-based criminal history record information relating to such provider, including transmittal of the fingerprints to the Federal Bureau of Investigation for a national fingerprint-based criminal history record information check.

(c) The fingerprint-based criminal history record information check shall include information concerning the provider from federal repositories of such information and repositories of such information in other states, if authorized by federal law.

(d) The Nebraska State Patrol shall issue a report to the department that includes the fingerprint-based criminal history record information concerning the provider.

(e) The provider or individual being screened shall pay the actual cost of the fingerprinting and fingerprint-based criminal history record information check.

(2) The department shall maintain a record of the results of the fingerprint-based criminal history record information check.

(3) The department may deny or terminate the enrollment of:

(a) Any provider who is an individual who does not pass the national fingerprint-based criminal history record information check; or

(b) Any provider in which an individual with at least a five percent direct or indirect ownership interest in the provider does not pass the national fingerprint-based criminal history record information check. Criteria for not passing the fingerprint-based criminal history record information check includes at least the following: (i) Any criminal conviction within the last ten years related to the provider's involvement with the federal Health Insurance for the Aged Act, 42 U.S.C. 1305 et seq., any program or assistance set forth in Chapter 68, or the federal Children's Health Insurance Program established pursuant to 42 U.S.C. 1397aa, as such act, laws, and section existed on January 1, 2016; or (ii) any conviction involving fraudulent activities.

Source: Laws 2016, LB698, § 16.

68-977 Ground Emergency Medical Transport Act; act, how cited.

Sections 68-977 to 68-988 shall be known and may be cited as the Ground Emergency Medical Transport Act.

Source: Laws 2017, LB578, § 2.

68-978 Terms, defined.

For purposes of the Ground Emergency Medical Transport Act:

(1) Advanced life support means special services designed to provide definitive prehospital emergency medical care, including, but not limited to, cardiopulmonary resuscitation, cardiac monitoring, cardiac defibrillation, advanced airway management, intravenous therapy, administration with drugs and other medicinal preparations, and other specified techniques and procedures;

(2) Basic life support means emergency first aid and cardiopulmonary resuscitation procedures to maintain life without invasive techniques;

(3) Capitation payment means a payment the state makes periodically to a contractor on behalf of each beneficiary enrolled under a contract and based on the actuarially sound capitation rate for the provision of services under the state plan and which the state makes regardless of whether the particular beneficiary receives services during the period covered by the payment;

(4) Dry run means ground emergency medical transport services provided by an eligible ground emergency medical transport services provider to an individual who is released on the scene without transportation by ambulance to a medical facility;

(5) Ground emergency medical transport means the act of transporting an individual from any point of origin to the nearest medical facility capable of meeting the emergency medical needs of the patient, including dry runs;

(6) Ground emergency medical transport services means advanced life support, limited advanced life support, and basic life support services provided to an individual by ground emergency medical transport services providers before or during ground emergency medical transport;

(7) Limited advanced life support means special services to provide prehospital emergency medical care limited to techniques and procedures that exceed basic life support but are less than advanced life support services; and

(8) Medical transport means transportation to secure medical examinations and treatment for an individual.

Source: Laws 2017, LB578, § 3.

68-979 Legislative intent.

It is the intent of the Legislature that no General Funds be used in carrying out the Ground Emergency Medical Transport Act.

Revenue from the intergovernmental transfer program created under the Ground Emergency Medical Transport Act shall be deposited into the Health and Human Services Cash Fund.

Source: Laws 2017, LB578, § 4.

68-980 Supplemental reimbursement.

An eligible provider as described in section 68-981 shall, in addition to the rate of payment that the provider would otherwise receive for medicaid ground emergency medical transport services, receive supplemental reimbursement pursuant to the Ground Emergency Medical Transport Act.

Source: Laws 2017, LB578, § 5.

68-981 Supplemental reimbursement; eligibility.

Participation in the supplemental reimbursement program by an eligible provider is voluntary. A provider is eligible for supplemental reimbursement

only if the provider has all of the following characteristics continuously during a fiscal year of the state:

- (1) Provides ground emergency medical transport services to medicaid beneficiaries;
- (2) Is enrolled as a medicaid provider for the period being claimed;
- (3) Is owned or operated by the state or a city, county, rural or suburban fire protection district, hospital district, federally recognized Indian tribe, or another unit of government; and
- (4) Participates in the intergovernmental transfer program created pursuant to section 68-983.

Source: Laws 2017, LB578, § 6.

68-982 Supplemental reimbursement; calculation and payment.

(1) An eligible provider's supplemental reimbursement pursuant to the Ground Emergency Medical Transport Act shall be calculated and paid as follows:

(a) The supplemental reimbursement shall equal the amount of federal financial participation received as a result of the claims submitted pursuant to the act; and

(b) In no instance may the amount certified pursuant to section 68-985, when combined with the amount received from all other sources of reimbursement from the medical assistance program, exceed one hundred percent of actual costs, as determined pursuant to the medicaid state plan, for ground emergency medical transport services.

(2) The supplemental reimbursement shall be distributed exclusively to eligible providers under a payment method based on ground emergency medical transport services provided to medicaid beneficiaries by eligible providers on a per-transport basis or other federally permissible basis.

Source: Laws 2017, LB578, § 7.

68-983 Intergovernmental transfer program; department; powers and duties.

(1) The department shall design and implement, in consultation with eligible providers as described in section 68-981, an intergovernmental transfer program relating to medicaid managed care ground emergency medical transport services, including services provided by emergency medical technicians at the basic, advanced, and paramedic levels in prestabilization and preparation for transport, in order to increase capitation payments for the purpose of increasing reimbursement to eligible providers.

(2)(a) To the extent intergovernmental transfers are voluntarily made by, and accepted from, an eligible provider described in section 68-981 or a governmental entity affiliated with an eligible provider, the department shall make increased capitation payments to applicable medicaid managed care plans.

(b) The increased capitation payments made pursuant to this section shall be in actuarially determined amounts at least to the extent permissible under federal law.

(c) Except as provided in subsection (6) of this section, all funds associated with intergovernmental transfers made and accepted pursuant to this section shall be used to fund additional payments to medicaid managed care plans.

(d) Medicaid managed care plans shall enter into contracts or contract amendments with providers for the disbursement of any amount of increased capitation payments made pursuant to this section.

(3) The intergovernmental transfer program developed pursuant to this section shall be implemented on the date federal approval is obtained and only to the extent intergovernmental transfers from the eligible provider or the governmental entity with which it is affiliated are provided for this purpose.

(4) To the extent permitted by federal law, the department may implement the intergovernmental transfer program and increased capitation payments pursuant to this section retroactive to the date that the state plan amendment is submitted to the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services pursuant to section 68-986.

(5) Participation in intergovernmental transfers under this section is voluntary on the part of the transferring entities for purposes of all applicable federal laws.

(6)(a) As a condition of participation under this section, each eligible provider or the governmental entity affiliated with an eligible provider shall agree to reimburse the department for any costs associated with implementing such program.

(b) Intergovernmental transfers described in this section are subject to a twenty percent administration fee of the nonfederal share paid to the department and are allowed to count as a cost of providing the services.

(7) As a condition of participation under this section, medicaid managed care plans, eligible providers, and governmental entities affiliated with eligible providers shall agree to comply with any requests for information or similar data requirements imposed by the department for purposes of obtaining supporting documentation necessary to claim federal funds or to obtain federal approval.

Source: Laws 2017, LB578, § 8.

68-984 Agreement.

(1) An eligible provider, as a condition of receiving supplemental reimbursement, shall enter into and maintain an agreement with the department for purposes of implementing the Ground Emergency Medical Transport Act and reimbursing the department for the costs of administering the act.

(2) The nonfederal share of the supplemental reimbursement submitted to the federal Centers for Medicare and Medicaid Services for purposes of claiming federal financial participation shall be paid only with funds from the governmental entities described in subdivision (3) of section 68-981 and certified to the department as provided in section 68-985.

Source: Laws 2017, LB578, § 9.

68-985 Governmental entity; duties.

If a governmental entity elects to seek supplemental reimbursement pursuant to the Ground Emergency Medical Transport Act on behalf of an eligible provider owned or operated by the entity, the governmental entity shall:

(1) Certify, in conformity with the requirements of 42 C.F.R. 433.51, that the claimed expenditures for ground emergency medical transport services are eligible for federal financial participation;

(2) Provide evidence supporting the certification as specified by the department;

(3) Submit data as specified by the department to determine the appropriate amounts to claim as expenditures qualifying for federal financial participation; and

(4) Keep, maintain, and have readily retrievable any records specified by the department to fully disclose reimbursement amounts to which the eligible provider is entitled and any other records required by the federal Centers for Medicare and Medicaid Services.

Source: Laws 2017, LB578, § 10.

68-986 Department; amendment to medicaid state plan; department; powers.

(1) On or before January 1, 2018, the department shall submit an application to the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services amending the medicaid state plan to provide for the supplemental reimbursement rate for ground emergency medical transport services as specified in the Ground Emergency Medical Transport Act.

(2) The department may limit the program to those costs that are allowable expenditures under Title XIX of the federal Social Security Act, 42 U.S.C. 1396 et seq., as such act and sections existed on April 1, 2017. Without such federal approval, the Ground Emergency Medical Transport Act may not be implemented.

(3) The intergovernmental transfer program authorized in section 68-983 shall be implemented only if and to the extent federal financial participation is available and is not otherwise jeopardized and any necessary federal approval has been obtained.

(4) To the extent that the chief executive officer of the department determines that the payments made pursuant to section 68-983 do not comply with federal medicaid requirements, the chief executive officer may return or not accept an intergovernmental transfer and may adjust payments as necessary to comply with federal medicaid requirements.

Source: Laws 2017, LB578, § 11.

68-987 Department; duties.

(1) The department shall submit claims for federal financial participation for the expenditures for the services described in section 68-986 that are allowable expenditures under federal law.

(2) The department shall annually submit any necessary materials to the federal government to provide assurances that claims for federal financial participation will include only those expenditures that are allowable under federal law.

(3) If either a final judicial determination is made by any court of appellate jurisdiction or a final determination is made by the administrator of the federal Centers for Medicare and Medicaid Services that the supplemental reimburse-

ment provided for in the act shall be made to any provider not described in this section, the chief executive officer of the department shall execute a declaration stating that the determination has been made and such supplemental reimbursement becomes inoperative on the date of such determination.

Source: Laws 2017, LB578, § 12.

68-988 Increased capitation payments; commencement.

To the extent federal approval is obtained, the increased capitation payments under section 68-983 may commence for dates of service on or after January 1, 2018.

Source: Laws 2017, LB578, § 13.

68-989 Disclosure by applicant; income and assets; action for recovery of medical assistance authorized.

(1) This section shall apply to the fullest extent permitted by federal law and understandings entered into between the state and the federal government. An applicant for medical assistance, or a person acting on behalf of the applicant, shall disclose at the time of application and, to the extent not owned at the time of application, at the time of any subsequent review of the applicant's eligibility for medical assistance all of his or her interests in any assets, including, but not limited to, any security, bank account, intellectual property right, contractual or lease right, real estate, trust, corporation, limited liability company, or other entity, whether such interest is direct or indirect, vested or contingent, or otherwise. The applicant or a person acting on behalf of the applicant shall also disclose:

(a) Any income derived from such interests and the source of the income; and

(b) Whether the income is generated directly or indirectly from (i) the applicant's spouse or an individual who is related to the applicant as described in section 77-2004 or 77-2005 or (ii) an entity controlled by one or more individuals described in subdivision (1)(b)(i) of this section. For purposes of this subdivision, control means individuals listed in subdivision (1)(b)(i) of this section together own or have the option to acquire more than fifty percent of the entity.

(2) If the applicant or a person acting on behalf of the applicant willfully fails to make the disclosures required in this section, any medical assistance obtained as a result of such failure is deemed unlawfully obtained and the department shall seek recovery of such medical assistance from the applicant or the estate of the recipient of medical assistance as defined in subdivision (4)(b) of section 68-919.

(3) If income is derived from a related party as described in subdivision (1)(b) of this section, the department shall determine whether the income is or, in the case of a written lease, whether the terms of the lease at the time it was entered into were commercially reasonable and consistent with income or lease terms derived in the relevant market area and negotiated at arms length between parties who are not related. If the department determines that the income or lease fails to meet these requirements, such income or lease shall be considered a transfer of the applicant's assets for less than full consideration and the department shall consider the resulting shortfall, to the fullest extent permitted by federal law, when determining eligibility for medical assistance or any share

of cost or as otherwise required by law. The burden of proof of commercial reasonableness rests with the applicant. The department's determination on commercial reasonableness may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

(4) An action for recovery of medical assistance obtained in violation of this section may be brought by the department against the applicant or against the estate of the recipient of medical assistance as defined in subdivision (4)(b) of section 68-919 at any time before five years after the death of both the applicant and the applicant's spouse, if any.

(5) The department may adopt and promulgate rules and regulations to carry out this section. The rules and regulations may include guidance on the commercial reasonableness of lease terms.

Source: Laws 2017, LB268, § 11.

Cross References

Administrative Procedure Act, see section 84-920.

68-990 Medical assistance; transfers; security for recovery of indebtedness to department; lien; notice; filing; department; duties.

(1) For purposes of this section:

(a) Related transferee means:

(i) An individual who is related to the transferor as described in section 77-2004 or 77-2005;

(ii) An entity controlled by one or more individuals described in subdivision (1)(a)(i) of this section. For purposes of this subdivision, control means individuals described in subdivision (1)(a)(i) of this section together own or have the option to acquire more than fifty percent of the entity; or

(iii) An irrevocable trust in which an individual described in subdivision (1)(a)(i) of this section is a beneficiary; and

(b) Related transferee does not include the recipient's spouse, if any, or a child who either is under twenty-one years of age or is blind or totally and permanently disabled as defined by Supplemental Security Income criteria.

(2) This section shall apply to the fullest extent permitted by federal law and understandings entered into between the state and the federal government. This section provides security for the recovery of the indebtedness to the department for medical assistance as provided in section 68-919. This section applies to transfers of real estate made on or after August 24, 2017. If, during the transferor's lifetime, an interest in real estate is irrevocably transferred to a related transferee for less than full consideration and the real estate transferred to the related transferee is subject to rights, actual or constructive possession, or powers retained by the transferor in a deed or other instrument, the interest in the real estate when acquired by the related transferee is subject to a lien in favor of the State of Nebraska for medical assistance reimbursement pursuant to section 68-919 to the extent necessary to secure payment in full of any claim remaining unpaid after application of the assets of the transferor's probate estate, not to exceed the amount determined under subsection (6) of this section. The lien does not attach to any interest retained by the transferor. Except as provided in this section, the lien applies to medical assistance provided before, at the same time as, or after the filing of the notice of lien under subsection (4) of this section.

(3) Within fifteen days after receipt of a statement required by section 76-214 indicating that the underlying real estate transfer was between relatives or, if to a trustee, where the trustor or settlor and the beneficiary are relatives, the register of deeds shall send a copy of such statement, together with the parcel identification number, if ascertainable, to the department. The copy shall be provided to the department in a delivery manner and at an address designated by the department, which manner may include email. The department shall post the acceptable manner of delivering the copy on its web site or otherwise communicate the manner of delivery to the registers of deeds.

(4) The lien imposed by subsection (2) of this section becomes effective upon the filing of a notice of lien in accordance with this subsection. The department may file a notice of the lien imposed by subsection (2) of this section only after the department receives an application for medical assistance on behalf of a transferor. The notice must be filed in the office of the register of deeds of the county or counties in which the real estate subject to the lien is located. The notice must provide the legal description of the real estate subject to the lien, specify the amount then secured by the lien, and indicate that the lien also covers any future medical assistance provided to the transferor. The department shall provide the register of deeds with a self-addressed return envelope bearing sufficient postage for purposes of returning to the department a file-stamped copy of the notice of lien, which the register of deeds shall mail to the department. The lien is not valid against the owner of an interest in real estate received by a grantee who is not a related transferee pursuant to a deed or other instrument if such deed or other instrument is filed prior to the notice of lien. A lien that is not valid under this subsection shall be released by the department upon notice thereof from such grantee or a subsequent bona fide purchaser. A lien is valid against any subsequent creditor only if notice of such lien has been filed by the department in accordance with this subsection. Any mortgage or trust deed recorded prior to the filing of a notice of lien shall have priority over such lien. Except as provided in subsection (5) of this section, any optional future advance or advance necessary to protect the security secured by the mortgage or trust deed shall have the same priority as the mortgage or trust deed.

(5) Any optional future advance made pursuant to a mortgage or trust deed on real estate recorded prior to the filing of a notice of lien under subsection (4) of this section shall be junior to such lien only if the optional future advance is made after:

(a) A notice of lien has been filed by the department in accordance with subsection (4) of this section; and

(b) Written notice of the filing for record of such notice of lien has been received by the mortgagee or beneficiary at the address of the mortgagee or beneficiary set forth in the mortgage or trust deed or, if the mortgage or trust deed has been assigned, by the assignee at the address of the most recent assignee reflected in a recorded assignment of the mortgage or trust deed. The notice under this subdivision shall be sent by the department by certified mail to the applicable mortgagee, beneficiary, or assignee.

(6)(a) The lien authorized in this section is limited to the lesser of (i) the amount necessary to fully satisfy any reimbursement obligations remaining unpaid after application of any assets from the transferor's probate estate or (ii) the actual value of the real estate at the time that the lien is enforced minus the

consideration adjustment and minus the cost of the improvements made to the real estate by or on behalf of the related transferee, if any.

(b) For purposes of this subsection:

(i) Actual value has the same meaning as in section 77-112;

(ii) Consideration adjustment means the amount of consideration paid by the related transferee to the transferor for the real estate multiplied by the growth factor; and

(iii) Growth factor means the actual value of the real estate at the time the lien is enforced divided by the actual value of the real estate at the time the consideration was paid.

(c) The burden of proof for showing the consideration paid for the real estate, the cost of any improvements to the real estate, and the actual value of the real estate rests with the related transferee or his or her successor in interest.

(7) If a deed or other instrument transferring an interest in real estate contains a recital acknowledged by the grantor stating that the grantee is not a related transferee, the real estate being transferred shall not be subject to the lien imposed by this section. A related transferee who takes possession or otherwise enjoys the benefits of the transfer knowing the recital is false becomes personally liable for medical assistance reimbursement to the extent necessary to discharge any claim remaining unpaid after application of the assets of the transferor's probate estate, not to exceed the amount determined under subsection (6) of this section.

(8) The department shall release or subordinate the lien authorized in this section upon application by the related transferee in which the related transferee agrees to indemnify the department for medical assistance reimbursement pursuant to section 68-919 to the extent necessary to discharge any such claim remaining unpaid after application of the assets of the transferor's probate estate, not to exceed the amount determined under subsection (6) of this section. The department may require the application submitted pursuant to this subsection to be accompanied by good and sufficient sureties or other evidence determined by the department to be sufficient to secure the liability. The department shall also release the lien upon a satisfactory showing of undue hardship or a showing that the interest subject to the lien is not one from which medical assistance reimbursement may be had.

(9)(a) Any indemnity and any lien shall be released upon:

(i) Notice delivered to the department, by certified mail, return receipt requested, of (A) the death and identification, including the social security number, of the transferor, (B) the legal description of the real estate subject to the indemnity or lien, and (C) the names and addresses of the owners of record of the real estate; and

(ii) The department either (A) filing a release of lien with the register of deeds of the county or counties in which the real estate subject to the lien is located or (B) not filing an action to foreclose the lien or collect on the indemnity within one year after delivery of the notice required under subdivision (9)(a)(i) of this section.

(b) Proof of delivery of such notice shall be made by filing a copy of the notice and a copy of the certified mail return receipt with the register of deeds of the county or counties in which the real estate subject to the lien is located.

(10) The department may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2017, LB268, § 12.

68-991 Medical provider; authority to apply for medical assistance.

A medical provider shall have the authority of a guardian and conservator for the limited purpose of making application for medical assistance on behalf of a person whom the provider is treating if the person is unconscious or otherwise is unable to apply for medical assistance and does not have an existing power of attorney or a court-appointed individual to apply on the person's behalf.

Source: Laws 2017, LB268, § 13.

ARTICLE 10

ASSISTANCE, GENERALLY

Cross References

Homes for aged persons, establishment by counties, see section 23-3501.

Telephone service, financial assistance, Nebraska Telephone Assistance Program, see section 86-329.

(a) ASSISTANCE TO THE AGED, BLIND, OR DISABLED

Section

- 68-1001. Assistance to the aged, blind, or disabled; program; administration.
- 68-1001.01. Department of Health and Human Services; rules and regulations; promulgate.
- 68-1001.02. Assistance; action for reimbursement; statute of limitations; when commences to run.
- 68-1002. Persons eligible for assistance.
- 68-1003. Assistance to the aged; additional qualifications required.
- 68-1004. Assistance to the blind; additional qualifications required.
- 68-1005. Assistance to the disabled; additional qualifications required; department; powers and duties.
- 68-1006. Assistance to the aged, blind, or disabled; amount authorized per person; payment.
- 68-1006.01. Personal needs allowance; amount authorized.
- 68-1007. Determination of need; elements considered; amounts disregarded.
- 68-1008. Application for assistance; investigation; notification.
- 68-1009. Repealed. Laws 1982, LB 522, § 46.
- 68-1010. Repealed. Laws 1982, LB 522, § 46.
- 68-1011. Repealed. Laws 1972, LB 760, § 2.
- 68-1012. Repealed. Laws 1969, c. 532, § 2.
- 68-1013. Assistance to the aged, blind, and disabled; not vested right; not assignable; exemption from levy.
- 68-1014. Assistance; payment to guardian or conservator; when authorized.

(b) PROCEDURE AND PENALTIES

- 68-1015. Assistance; investigation; attendance of witnesses; production of records; subpoena power; oaths.
- 68-1016. Assistance; appeals; procedure.
- 68-1017. Assistance; violations; penalties.
- 68-1017.01. Supplemental Nutrition Assistance Program; violations; penalties.
- 68-1017.02. Supplemental Nutrition Assistance Program; department; duties; state outreach plan; report; contents; person ineligible; when.

(c) MEDICAL ASSISTANCE

- 68-1018. Transferred to section 68-903.
- 68-1019. Transferred to section 68-911.
- 68-1019.01. Transferred to section 68-912.
- 68-1019.02. Repealed. Laws 2006, LB 1248, § 92.
- 68-1019.03. Repealed. Laws 2006, LB 1248, § 92.

PUBLIC ASSISTANCE

Section

- 68-1019.04. Repealed. Laws 2006, LB 1248, § 92.
- 68-1019.05. Repealed. Laws 2006, LB 1248, § 92.
- 68-1019.06. Repealed. Laws 2006, LB 1248, § 92.
- 68-1019.07. Repealed. Laws 1996, LB 1044, § 985.
- 68-1019.08. Repealed. Laws 1996, LB 1155, § 121.
- 68-1019.09. Repealed. Laws 2006, LB 1248, § 92.
- 68-1020. Transferred to section 68-915.
- 68-1021. Transferred to section 68-906.
- 68-1021.01. Repealed. Laws 2006, LB 1248, § 92.
- 68-1022. Transferred to section 68-910.
- 68-1023. Transferred to section 68-908.
- 68-1023.01. Repealed. Laws 1993, LB 816, § 22.
- 68-1024. Repealed. Laws 2006, LB 1248, § 92.
- 68-1025. Repealed. Laws 2006, LB 1248, § 92.
- 68-1025.01. Transferred to section 68-913.
- 68-1026. Transferred to section 68-916.
- 68-1027. Transferred to section 68-917.
- 68-1028. Transferred to section 68-918.
- 68-1029. Repealed. Laws 2006, LB 1248, § 92.
- 68-1030. Repealed. Laws 2006, LB 1248, § 92.
- 68-1031. Repealed. Laws 2006, LB 1248, § 92.
- 68-1032. Repealed. Laws 1993, LB 816, § 22.
- 68-1033. Repealed. Laws 2006, LB 1248, § 92.
- 68-1034. Repealed. Laws 2006, LB 1248, § 92.
- 68-1035. Repealed. Laws 2006, LB 1248, § 92.
- 68-1035.01. Repealed. Laws 2006, LB 1248, § 92.
- 68-1036. Repealed. Laws 2006, LB 1248, § 92.
- 68-1036.01. Repealed. Laws 1996, LB 1155, § 121.
- 68-1036.02. Transferred to section 68-919.
- 68-1036.03. Transferred to section 68-920.
- 68-1037. Repealed. Laws 2006, LB 1248, § 92.
- 68-1037.01. Transferred to section 68-1073.
- 68-1037.02. Transferred to section 68-1074.
- 68-1037.03. Transferred to section 68-1075.
- 68-1037.04. Transferred to section 68-1079.
- 68-1037.05. Transferred to section 68-1080.
- 68-1037.06. Repealed. Laws 2000, LB 1135, § 34.

(d) ENTITLEMENT OF SPOUSE

- 68-1038. Transferred to section 68-921.
- 68-1039. Transferred to section 68-922.
- 68-1040. Transferred to section 68-923.
- 68-1041. Repealed. Laws 1989, LB 362, § 19.
- 68-1042. Transferred to section 68-924.
- 68-1043. Transferred to section 68-925.
- 68-1044. Repealed. Laws 1989, LB 362, § 19.
- 68-1045. Repealed. Laws 1989, LB 362, § 19.
- 68-1046. Repealed. Laws 1989, LB 362, § 19.

(e) TRUSTS

- 68-1047. Repealed. Laws 2000, LB 1352, § 4.

(f) MANAGED CARE PLAN

- 68-1048. Repealed. Laws 2006, LB 1248, § 92.
- 68-1049. Repealed. Laws 2006, LB 1248, § 92.
- 68-1050. Repealed. Laws 2006, LB 1248, § 92.
- 68-1051. Repealed. Laws 2006, LB 1248, § 92.
- 68-1052. Repealed. Laws 2000, LB 892, § 7.
- 68-1053. Repealed. Laws 2000, LB 892, § 7.
- 68-1054. Repealed. Laws 2000, LB 892, § 7.
- 68-1055. Repealed. Laws 2000, LB 892, § 7.

ASSISTANCE, GENERALLY

Section

- 68-1056. Repealed. Laws 2006, LB 1248, § 92.
- 68-1057. Repealed. Laws 2006, LB 1248, § 92.
- 68-1058. Repealed. Laws 2006, LB 1248, § 92.
- 68-1059. Repealed. Laws 2006, LB 1248, § 92.
- 68-1060. Repealed. Laws 2006, LB 1248, § 92.
- 68-1061. Repealed. Laws 2006, LB 1248, § 92.
- 68-1062. Repealed. Laws 2006, LB 1248, § 92.
- 68-1063. Repealed. Laws 2006, LB 1248, § 92.
- 68-1064. Repealed. Laws 2005, LB 301, § 78.
- 68-1065. Repealed. Laws 2000, LB 892, § 7.
- 68-1066. Repealed. Laws 2000, LB 892, § 7.

(g) MEDICAID RECIPIENTS PARTICIPATING IN MANAGED CARE PLAN

- 68-1067. Repealed. Laws 2006, LB 1248, § 92.
- 68-1068. Repealed. Laws 2006, LB 1248, § 92.
- 68-1069. Repealed. Laws 2006, LB 1248, § 92.

(h) NON-UNITED-STATES CITIZENS

- 68-1070. Repealed. Laws 2011, LB 465, § 2.

(i) SCHOOL DISTRICTS AND EDUCATIONAL SERVICE UNITS

- 68-1071. Repealed. Laws 2006, LB 1248, § 92.
- 68-1072. Repealed. Laws 2006, LB 1248, § 92.

(j) FALSE MEDICAID CLAIMS ACT

- 68-1073. Transferred to section 68-934.
- 68-1074. Transferred to section 68-935.
- 68-1075. Transferred to section 68-936.
- 68-1076. Transferred to section 68-937.
- 68-1077. Transferred to section 68-938.
- 68-1078. Transferred to section 68-939.
- 68-1079. Transferred to section 68-940.
- 68-1080. Transferred to section 68-941.
- 68-1081. Transferred to section 68-942.
- 68-1082. Transferred to section 68-943.
- 68-1083. Transferred to section 68-944.
- 68-1084. Transferred to section 68-945.
- 68-1085. Transferred to section 68-946.
- 68-1086. Transferred to section 68-947.

(k) MEDICAID REFORM ACT

- 68-1087. Repealed. Laws 2006, LB 1248, § 92.
- 68-1088. Repealed. Laws 2006, LB 1248, § 92.
- 68-1089. Repealed. Laws 2006, LB 1248, § 92.
- 68-1090. Repealed. Laws 2006, LB 1248, § 92.
- 68-1091. Repealed. Laws 2006, LB 1248, § 92.
- 68-1092. Repealed. Laws 2006, LB 1248, § 92.
- 68-1093. Repealed. Laws 2006, LB 1248, § 92.
- 68-1094. Repealed. Laws 2006, LB 1248, § 92.

(l) LONG-TERM CARE PARTNERSHIP PROGRAM

- 68-1095. Repealed. Laws 2006, LB 965, § 10; Laws 2006, LB 1248, § 92.
- 68-1095.01. Long-Term Care Partnership Program; established; Department of Health and Human Services; duties.
- 68-1096. Repealed. Laws 2006, LB 965, § 10; Laws 2006, LB 1248, § 92.
- 68-1097. Repealed. Laws 2006, LB 965, § 10; Laws 2006, LB 1248, § 92.
- 68-1098. Repealed. Laws 2006, LB 965, § 10; Laws 2006, LB 1248, § 92.
- 68-1099. Repealed. Laws 2006, LB 965, § 10; Laws 2006, LB 1248, § 92.

(m) COORDINATION OF BENEFITS

- 68-10,100. Transferred to section 68-926.
- 68-10,101. Transferred to section 68-927.
- 68-10,102. Transferred to section 68-928.

Section
 68-10,103. Transferred to section 68-929.
 68-10,104. Transferred to section 68-930.
 68-10,105. Transferred to section 68-931.
 68-10,106. Transferred to section 68-932.
 68-10,107. Transferred to section 68-933.

(a) ASSISTANCE TO THE AGED, BLIND, OR DISABLED

68-1001 Assistance to the aged, blind, or disabled; program; administration.

There is hereby established in and for the State of Nebraska a program to be known as assistance to the aged, blind, or disabled, which assistance shall be administered by the Department of Health and Human Services. Such assistance shall consist of money payments to, medical care in behalf of, or any type of remedial care in behalf of needy individuals.

Source: Laws 1965, c. 395, § 1, p. 1264; Laws 1982, LB 522, § 36; Laws 1996, LB 1044, § 304.

68-1001.01 Department of Health and Human Services; rules and regulations; promulgate.

For the purpose of adding to the security and social adjustment of former and potential recipients of assistance to the aged, blind, and disabled, and of medical assistance, the Department of Health and Human Services is authorized to promulgate rules and regulations providing for services to such persons.

Source: Laws 1969, c. 558, § 1, p. 2274; Laws 1996, LB 1044, § 305; Laws 2007, LB296, § 264.

Regulations adopted hereunder provide appeal forms may be filed with the county division and that place of hearing shall be the county in which appellant resides. Downer v. Ihms, 192 Neb. 594, 223 N.W.2d 148 (1974).

68-1001.02 Assistance; action for reimbursement; statute of limitations; when commences to run.

No statute of limitations shall apply to any claim or cause of action, belonging to the county or state on account of the payment of assistance to the aged, blind or disabled while the recipient, former recipient, spouse, or dependent children of such recipient survive.

Source: Laws 1935, Spec. Sess., c. 28, § 13, p. 172; C.S.Supp.,1941, § 68-269; R.S.1943, § 68-216; Laws 1965, c. 395, § 22, p. 1272; R.S.1943, (1990), § 68-216.

Statute of limitations on claim for reimbursement does not begin to run while recipient is alive. Boone County Old Age Assistance Board v. Myhre, 149 Neb. 669, 32 N.W.2d 262 (1948).

68-1002 Persons eligible for assistance.

In order to qualify for assistance to the aged, blind, or disabled, an individual:

(1) Must be a bona fide resident of the State of Nebraska, except that a resident of another state who enters the State of Nebraska solely for the purpose of receiving care in a home licensed by the Department of Health and Human Services shall not be deemed to be a bona fide resident of Nebraska while such care is being provided;

(2) Shall not be receiving care or services as an inmate of a public institution, except as a patient in a medical institution, and if the individual is a patient in

an institution for tuberculosis or mental diseases, he or she has attained the age of sixty-five years;

(3) Shall not have deprived himself or herself directly or indirectly of any property whatsoever for the purpose of qualifying for assistance to the aged, blind, or disabled;

(4) May receive care in a public or private institution only if such institution is subject to a state authority or authorities which shall be responsible for establishing and maintaining standards for such institutions; and

(5) Must be in need of shelter, maintenance, or medical care.

Source: Laws 1965, c. 395, § 2, p. 1264; Laws 1965, c. 396, § 1, p. 1274; Laws 1965, c. 397, § 1, p. 1276; Laws 1967, c. 409, § 2, p. 1273; Laws 1969, c. 343, § 5, p. 1208; Laws 1977, LB 480, § 1; Laws 1996, LB 1044, § 306; Laws 2007, LB296, § 265.

The clear import of this section is to prevent citizens from raiding the public purse when they possess sufficient resources to care for themselves. This section provides an exception to the general rule expressed in section 30-2352 that a renunciation of assets relates back to the death of the decedent "for all purposes"; that is, this section declares a citizen ineligible if he has deprived himself "directly or indirectly of any property whatso-

ever" for the purpose of qualifying for assistance. *Hoesly v. State*, 243 Neb. 304, 498 N.W.2d 571 (1993).

Under the language of this section, depriving oneself of resources is not, in and of itself, the disqualifying act; disqualification results from doing so with the intention and for the purpose of becoming eligible for public assistance. *Meier v. State*, 227 Neb. 376, 417 N.W.2d 771 (1988).

68-1003 Assistance to the aged; additional qualifications required.

In order to qualify for assistance to the aged, an individual must, in addition to the requirements set forth in section 68-1002, have attained the age of sixty-five years.

Source: Laws 1965, c. 395, § 3, p. 1265.

68-1004 Assistance to the blind; additional qualifications required.

In order to qualify for assistance to the blind, an individual must, in addition to the requirements set forth in section 68-1002, have been determined to be blind by an examination by a physician skilled in diseases of the eye or by an optometrist.

Source: Laws 1965, c. 395, § 4, p. 1265; Laws 1977, LB 311, § 1.

68-1005 Assistance to the disabled; additional qualifications required; department; powers and duties.

In order to qualify for assistance to the disabled, an individual shall, in addition to the requirements set forth in section 68-1002, be considered to be disabled if he or she is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than one hundred eighty days or, in the case of a child under eighteen years of age, if he or she suffers from any medically determinable physical or mental impairment of comparable severity. In determining eligibility for assistance to the disabled, the Department of Health and Human Services may adopt the determination of the Social Security Administration that an individual is or is not disabled for the purposes of the federal programs of Supplemental Security Income or Old Age Survivors' and Disability Insurance, except that if the Social Security Administration has denied benefits to an individual on the basis of the duration of the individual's

disability, the department shall perform an independent medical review of such individual's disability.

Source: Laws 1965, c. 395, § 5, p. 1266; Laws 1976, LB 454, § 1; Laws 1977, LB 311, § 2; Laws 1984, LB 1127, § 1; Laws 1996, LB 1044, § 307.

68-1006 Assistance to the aged, blind, or disabled; amount authorized per person; payment.

The amount of assistance to the aged, blind or disabled shall be based on the need of the individual and the circumstances existing in each case. When permitted by the federal old age and survivors insurance act, any accumulations of increased benefits under such act may be disregarded when determining need. Payments shall be made by state warrant directly to each recipient.

Source: Laws 1965, c. 395, § 6, p. 1266; Laws 1965, c. 397, § 2, p. 1277; Laws 1967, c. 410, § 1, p. 1274; Laws 1969, c. 535, § 2, p. 2180.

68-1006.01 Personal needs allowance; amount authorized.

The Department of Health and Human Services shall include in the standard of need for eligible aged, blind, and disabled persons at least sixty dollars per month for a personal needs allowance if such persons reside in an alternative living arrangement.

For purposes of this section, an alternative living arrangement shall include board and room, a boarding home, a certified adult family home, a licensed assisted-living facility, a licensed residential child-caring agency as defined in section 71-1926, a licensed center for the developmentally disabled, and a long-term care facility.

Source: Laws 1991, LB 57, § 1; Laws 1996, LB 1044, § 308; Laws 1997, LB 608, § 3; Laws 1999, LB 119, § 1; Laws 2000, LB 819, § 79; Laws 2013, LB265, § 37; Laws 2015, LB366, § 1.

68-1007 Determination of need; elements considered; amounts disregarded.

In determining need for assistance to the aged, blind, or disabled, the Department of Health and Human Services shall take into consideration all other income and resources of the individual claiming such assistance, as well as any expenses reasonably attributable to the earning of any such income, except as otherwise provided in this section. In making such determination with respect to any individual who is blind, there shall be disregarded the first eighty-five dollars per month of earned income plus one-half of earned income in excess of eighty-five dollars per month and, for a period not in excess of twelve months, such additional amounts of other income and resources, in the case of an individual who has an approved plan for achieving self-support, as may be necessary for the fulfillment of such plan. In making such determination with respect to an individual who has attained age sixty-five, or who is permanently and totally disabled, and is claiming aid to the aged, blind, or disabled, the department shall disregard earned income at least to the extent such income was disregarded on January 1, 1972, as provided in 42 U.S.C. 1396a(f).

Source: Laws 1965, c. 395, § 7, p. 1266; Laws 1967, c. 411, § 1, p. 1275; Laws 1969, c. 539, § 1, p. 2189; Laws 1972, LB 760, § 1; Laws 1982, LB 522, § 37; Laws 1987, LB 255, § 1; Laws 1996, LB 1044, § 309; Laws 2007, LB296, § 266.

Cross References

Available resources, computation, see section 68-129.

68-1008 Application for assistance; investigation; notification.

Upon the filing of an application for assistance to the aged, blind, or disabled, the Department of Health and Human Services shall make such investigation as it deems necessary to determine the circumstances existing in each case. Each applicant and recipient shall be notified in writing as to (1) the approval or disapproval of any application, (2) the amount of payments awarded, (3) any change in the amount of payments awarded, and (4) the discontinuance of payments.

Source: Laws 1965, c. 395, § 8, p. 1267; Laws 1967, c. 253, § 2, p. 673; Laws 1977, LB 312, § 8; Laws 1982, LB 522, § 38; Laws 1996, LB 1044, § 310; Laws 2007, LB296, § 267.

68-1009 Repealed. Laws 1982, LB 522, § 46.

68-1010 Repealed. Laws 1982, LB 522, § 46.

68-1011 Repealed. Laws 1972, LB 760, § 2.

68-1012 Repealed. Laws 1969, c. 532, § 2.

68-1013 Assistance to the aged, blind, and disabled; not vested right; not assignable; exemption from levy.

No person shall have any vested right to any claim against the county or state for assistance of any kind by virtue of being or having been a recipient of assistance to the aged, blind or disabled, aid to dependent children, or medical assistance for the aged. No such assistance shall be alienable by assignment or transfer, or be subject to attachment, garnishment or any other legal process.

Source: Laws 1965, c. 394, § 1, p. 1261.

68-1014 Assistance; payment to guardian or conservator; when authorized.

If any guardian or conservator shall have been appointed to take charge of the property of any recipient of assistance to the aged, blind, or disabled, aid to dependent children, or medical assistance, such assistance payments shall be made to the guardian or conservator upon his or her filing with the Department of Health and Human Services a certified copy of his or her letters of guardianship or conservatorship.

Source: Laws 1965, c. 394, § 2, p. 1261; Laws 1982, LB 522, § 39; Laws 1996, LB 1044, § 311; Laws 2007, LB296, § 268.

(b) PROCEDURE AND PENALTIES

68-1015 Assistance; investigation; attendance of witnesses; production of records; subpoena power; oaths.

For the purpose of any investigation or hearing, the chief executive officer of the Department of Health and Human Services and the division directors appointed pursuant to section 81-3115, through authorized agents, shall have the power to compel, by subpoena, the attendance and testimony of witnesses

and the production of books and papers. Witnesses may be examined on oath or affirmation.

Source: Laws 1965, c. 394, § 3, p. 1262; Laws 1982, LB 522, § 40; Laws 1996, LB 1044, § 312; Laws 2007, LB296, § 269.

68-1016 Assistance; appeals; procedure.

The chief executive officer of the Department of Health and Human Services, or his or her designated representative, shall provide for granting an opportunity for a fair hearing to any individual whose claim for assistance to the aged, blind, or disabled, aid to dependent children, emergency assistance, medical assistance, commodities, or Supplemental Nutrition Assistance Program benefits is denied, is not granted in full, or is not acted upon with reasonable promptness. An appeal shall be taken by filing with the department a written notice of appeal setting forth the facts on which the appeal is based. The department shall thereupon, in writing, notify the appellant of the time and place for hearing which shall be not less than one week nor more than six weeks from the date of such notice. Hearings shall be before the duly authorized agent of the department. On the basis of evidence adduced, the duly authorized agent shall enter a final order on such appeal, which order shall be transmitted to the appellant.

Source: Laws 1965, c. 394, § 4, p. 1262; Laws 1969, c. 540, § 1, p. 2190; Laws 1982, LB 522, § 41; Laws 1989, LB 362, § 9; Laws 1996, LB 1044, § 313; Laws 1998, LB 1073, § 57; Laws 2007, LB296, § 270; Laws 2009, LB288, § 25.

One seeking public assistance has the burden of proving entitlement to the benefits. *Dobrovlny v. Dunning*, 221 Neb. 67, 375 N.W.2d 123 (1985).

Orders of the Department of Public Welfare made pursuant to this section may be reviewed by petition in error as well as by appeal. *Downer v. Ihms*, 192 Neb. 594, 223 N.W.2d 148 (1974).

68-1017 Assistance; violations; penalties.

(1) Any person, including vendors and providers of medical assistance and social services, who, by means of a willfully false statement or representation, or by impersonation or other device, obtains or attempts to obtain, or aids or abets any person to obtain or to attempt to obtain (a) an assistance certificate of award to which he or she is not entitled, (b) any commodity, any foodstuff, any food instrument, any Supplemental Nutrition Assistance Program benefit or electronic benefit card, or any payment to which such individual is not entitled or a larger payment than that to which he or she is entitled, (c) any payment made on behalf of a recipient of medical assistance or social services, or (d) any other benefit administered by the Department of Health and Human Services, or who violates any statutory provision relating to assistance to the aged, blind, or disabled, aid to dependent children, social services, or medical assistance, commits an offense.

(2) Any person who commits an offense under subsection (1) of this section shall upon conviction be punished as follows: (a) If the aggregate value of all funds or other benefits obtained or attempted to be obtained is less than five hundred dollars, the person so convicted shall be guilty of a Class IV misdemeanor; (b) if the aggregate value of all funds or other benefits obtained or attempted to be obtained is five hundred dollars or more but less than one thousand five hundred dollars, the person so convicted shall be guilty of a Class III misdemeanor; or (c) if the aggregate value of all funds and other benefits

obtained or attempted to be obtained is one thousand five hundred dollars or more, the person so convicted shall be guilty of a Class IV felony.

Source: Laws 1965, c. 394, § 5, p. 1262; Laws 1969, c. 541, § 1, p. 2192; Laws 1977, LB 39, § 127; Laws 1984, LB 1127, § 2; Laws 1996, LB 1044, § 314; Laws 1998, LB 1073, § 58; Laws 2007, LB296, § 271; Laws 2009, LB288, § 26; Laws 2010, LB849, § 14; Laws 2015, LB605, § 79.

It is immaterial whether wrongfully obtained benefits are used for oneself or for another. State v. Burke, 23 Neb. App. 750, 876 N.W.2d 922 (2016).

68-1017.01 Supplemental Nutrition Assistance Program; violations; penalties.

(1) A person commits an offense if he or she knowingly uses, alters, or transfers any Supplemental Nutrition Assistance Program benefits or electronic benefit cards or any authorizations to participate in the Supplemental Nutrition Assistance Program in any manner not authorized by law. An offense under this subsection shall be a Class IV misdemeanor if the value of the Supplemental Nutrition Assistance Program benefits, electronic benefit cards, or authorizations is less than five hundred dollars, shall be a Class III misdemeanor if the value is five hundred dollars or more but less than one thousand five hundred dollars, and shall be a Class IV felony if the value is one thousand five hundred dollars or more.

(2) A person commits an offense if he or she knowingly (a) possesses any Supplemental Nutrition Assistance Program benefits or electronic benefit cards or any authorizations to participate in the Supplemental Nutrition Assistance Program when such individual is not authorized by law to possess them, (b) redeems Supplemental Nutrition Assistance Program benefits or electronic benefit cards when he or she is not authorized by law to redeem them, or (c) redeems Supplemental Nutrition Assistance Program benefits or electronic benefit cards for purposes not authorized by law. An offense under this subsection shall be a Class IV misdemeanor if the value of the Supplemental Nutrition Assistance Program benefits, electronic benefit cards, or authorizations is less than five hundred dollars, shall be a Class III misdemeanor if the value is five hundred dollars or more but less than one thousand five hundred dollars, and shall be a Class IV felony if the value is one thousand five hundred dollars or more.

(3) A person commits an offense if he or she knowingly possesses blank authorizations to participate in the Supplemental Nutrition Assistance Program when such possession is not authorized by law. An offense under this subsection shall be a Class IV felony.

(4) When any Supplemental Nutrition Assistance Program benefits or electronic benefit cards or any authorizations to participate in the Supplemental Nutrition Assistance Program of various values are obtained in violation of this section pursuant to one scheme or a continuing course of conduct, whether from the same or several sources, such conduct may be considered as one offense, and the values aggregated in determining the grade of the offense.

Source: Laws 1984, LB 1127, § 3; Laws 1998, LB 1073, § 59; Laws 2009, LB288, § 27; Laws 2010, LB849, § 15; Laws 2015, LB605, § 80.

68-1017.02 Supplemental Nutrition Assistance Program; department; duties; state outreach plan; report; contents; person ineligible; when.

(1)(a) The Department of Health and Human Services shall apply for and utilize to the maximum extent possible, within limits established by the Legislature, any and all appropriate options available to the state under the federal Supplemental Nutrition Assistance Program and regulations adopted under such program to maximize the number of Nebraska residents being served under such program within such limits. The department shall seek to maximize federal funding for such program and minimize the utilization of General Funds for such program and shall employ the personnel necessary to determine the options available to the state and issue the report to the Legislature required by subdivision (b) of this subsection.

(b) The department shall submit electronically an annual report to the Health and Human Services Committee of the Legislature by December 1 on efforts by the department to carry out the provisions of this subsection. Such report shall provide the committee with all necessary and appropriate information to enable the committee to conduct a meaningful evaluation of such efforts. Such information shall include, but not be limited to, a clear description of various options available to the state under the federal Supplemental Nutrition Assistance Program, the department's evaluation of and any action taken by the department with respect to such options, the number of persons being served under such program, and any and all costs and expenditures associated with such program.

(c) The Health and Human Services Committee of the Legislature, after receipt and evaluation of the report required in subdivision (b) of this subsection, shall issue recommendations to the department on any further action necessary by the department to meet the requirements of this section.

(2)(a) The department shall develop a state outreach plan to promote access by eligible persons to benefits of the Supplemental Nutrition Assistance Program. The plan shall meet the criteria established by the Food and Nutrition Service of the United States Department of Agriculture for approval of state outreach plans. The Department of Health and Human Services may apply for and accept gifts, grants, and donations to develop and implement the state outreach plan.

(b) For purposes of developing and implementing the state outreach plan, the department shall partner with one or more counties or nonprofit organizations. If the department enters into a contract with a nonprofit organization relating to the state outreach plan, the contract may specify that the nonprofit organization is responsible for seeking sufficient gifts, grants, or donations necessary for the development and implementation of the state outreach plan and may additionally specify that any costs to the department associated with the award and management of the contract or the implementation or administration of the state outreach plan shall be paid out of private or federal funds received for development and implementation of the state outreach plan.

(c) The department shall submit the state outreach plan to the Food and Nutrition Service of the United States Department of Agriculture for approval on or before August 1, 2011, and shall request any federal matching funds that may be available upon approval of the state outreach plan. It is the intent of the Legislature that the State of Nebraska and the Department of Health and Human Services use any additional public or private funds to offset costs

associated with increased caseload resulting from the implementation of the state outreach plan.

(d) The department shall be exempt from implementing or administering a state outreach plan under this subsection, but not from developing such a plan, if it does not receive private or federal funds sufficient to cover the department's costs associated with the implementation and administration of the plan, including any costs associated with increased caseload resulting from the implementation of the plan.

(3)(a)(i) On or before October 1, 2011, the department shall create a TANF-funded program or policy that, in compliance with federal law, establishes categorical eligibility for federal food assistance benefits pursuant to the Supplemental Nutrition Assistance Program to maximize the number of Nebraska residents being served under such program in a manner that does not increase the current gross income eligibility limit.

(ii) Such TANF-funded program or policy shall eliminate all asset limits for eligibility for federal food assistance benefits, except that the total of liquid assets which includes cash on hand and funds in personal checking and savings accounts, money market accounts, and share accounts shall not exceed twenty-five thousand dollars pursuant to the Supplemental Nutrition Assistance Program, as allowed under federal law and under 7 C.F.R. 273.2(j)(2).

(iii) This subsection becomes effective only if the department receives funds pursuant to federal participation that may be used to implement this subsection.

(b) For purposes of this subsection:

(i) Federal law means the federal Food and Nutrition Act of 2008, 7 U.S.C. 2011 et seq., and regulations adopted under the act; and

(ii) TANF means the federal Temporary Assistance for Needy Families program established in 42 U.S.C. 601 et seq.

(4)(a) Within the limits specified in this subsection, the State of Nebraska opts out of the provision of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as such act existed on January 1, 2009, that eliminates eligibility for the Supplemental Nutrition Assistance Program for any person convicted of a felony involving the possession, use, or distribution of a controlled substance.

(b) A person shall be ineligible for Supplemental Nutrition Assistance Program benefits under this subsection if he or she (i) has had three or more felony convictions for the possession or use of a controlled substance or (ii) has been convicted of a felony involving the sale or distribution of a controlled substance or the intent to sell or distribute a controlled substance. A person with one or two felony convictions for the possession or use of a controlled substance shall only be eligible to receive Supplemental Nutrition Assistance Program benefits under this subsection if he or she is participating in or has completed a state-licensed or nationally accredited substance abuse treatment program since the date of conviction. The determination of such participation or completion shall be made by the treatment provider administering the program.

Source: Laws 2003, LB 667, § 22; Laws 2005, LB 301, § 2; Laws 2008, LB171, § 1; Laws 2009, LB288, § 28; Laws 2011, LB543, § 1; Laws 2012, LB782, § 95.

(c) MEDICAL ASSISTANCE

68-1018 Transferred to section 68-903.

68-1019 Transferred to section 68-911.

68-1019.01 Transferred to section 68-912.

68-1019.02 Repealed. Laws 2006, LB 1248, § 92.

68-1019.03 Repealed. Laws 2006, LB 1248, § 92.

68-1019.04 Repealed. Laws 2006, LB 1248, § 92.

68-1019.05 Repealed. Laws 2006, LB 1248, § 92.

68-1019.06 Repealed. Laws 2006, LB 1248, § 92.

68-1019.07 Repealed. Laws 1996, LB 1044, § 985.

68-1019.08 Repealed. Laws 1996, LB 1155, § 121.

68-1019.09 Repealed. Laws 2006, LB 1248, § 92.

68-1020 Transferred to section 68-915.

68-1021 Transferred to section 68-906.

68-1021.01 Repealed. Laws 2006, LB 1248, § 92.

68-1022 Transferred to section 68-910.

68-1023 Transferred to section 68-908.

68-1023.01 Repealed. Laws 1993, LB 816, § 22.

68-1024 Repealed. Laws 2006, LB 1248, § 92.

68-1025 Repealed. Laws 2006, LB 1248, § 92.

68-1025.01 Transferred to section 68-913.

68-1026 Transferred to section 68-916.

68-1027 Transferred to section 68-917.

68-1028 Transferred to section 68-918.

68-1029 Repealed. Laws 2006, LB 1248, § 92.

68-1030 Repealed. Laws 2006, LB 1248, § 92.

68-1031 Repealed. Laws 2006, LB 1248, § 92.

68-1032 Repealed. Laws 1993, LB 816, § 22.

68-1033 Repealed. Laws 2006, LB 1248, § 92.

68-1034 Repealed. Laws 2006, LB 1248, § 92.

68-1035 Repealed. Laws 2006, LB 1248, § 92.

68-1035.01 Repealed. Laws 2006, LB 1248, § 92.

68-1036 Repealed. Laws 2006, LB 1248, § 92.

68-1036.01 Repealed. Laws 1996, LB 1155, § 121.

68-1036.02 Transferred to section 68-919.

68-1036.03 Transferred to section 68-920.

68-1037 Repealed. Laws 2006, LB 1248, § 92.

68-1037.01 Transferred to section 68-1073.

68-1037.02 Transferred to section 68-1074.

68-1037.03 Transferred to section 68-1075.

68-1037.04 Transferred to section 68-1079.

68-1037.05 Transferred to section 68-1080.

68-1037.06 Repealed. Laws 2000, LB 1135, § 34.

(d) ENTITLEMENT OF SPOUSE

68-1038 Transferred to section 68-921.

68-1039 Transferred to section 68-922.

68-1040 Transferred to section 68-923.

68-1041 Repealed. Laws 1989, LB 362, § 19.

68-1042 Transferred to section 68-924.

68-1043 Transferred to section 68-925.

68-1044 Repealed. Laws 1989, LB 362, § 19.

68-1045 Repealed. Laws 1989, LB 362, § 19.

68-1046 Repealed. Laws 1989, LB 362, § 19.

(e) TRUSTS

68-1047 Repealed. Laws 2000, LB 1352, § 4.

(f) MANAGED CARE PLAN

68-1048 Repealed. Laws 2006, LB 1248, § 92.

68-1049 Repealed. Laws 2006, LB 1248, § 92.

68-1050 Repealed. Laws 2006, LB 1248, § 92.

68-1051 Repealed. Laws 2006, LB 1248, § 92.

68-1052 Repealed. Laws 2000, LB 892, § 7.

- 68-1053 Repealed. Laws 2000, LB 892, § 7.**
- 68-1054 Repealed. Laws 2000, LB 892, § 7.**
- 68-1055 Repealed. Laws 2000, LB 892, § 7.**
- 68-1056 Repealed. Laws 2006, LB 1248, § 92.**
- 68-1057 Repealed. Laws 2006, LB 1248, § 92.**
- 68-1058 Repealed. Laws 2006, LB 1248, § 92.**
- 68-1059 Repealed. Laws 2006, LB 1248, § 92.**
- 68-1060 Repealed. Laws 2006, LB 1248, § 92.**
- 68-1061 Repealed. Laws 2006, LB 1248, § 92.**
- 68-1062 Repealed. Laws 2006, LB 1248, § 92.**
- 68-1063 Repealed. Laws 2006, LB 1248, § 92.**
- 68-1064 Repealed. Laws 2005, LB 301, § 78.**
- 68-1065 Repealed. Laws 2000, LB 892, § 7.**
- 68-1066 Repealed. Laws 2000, LB 892, § 7.**

(g) MEDICAID RECIPIENTS PARTICIPATING IN MANAGED CARE PLAN

- 68-1067 Repealed. Laws 2006, LB 1248, § 92.**
- 68-1068 Repealed. Laws 2006, LB 1248, § 92.**
- 68-1069 Repealed. Laws 2006, LB 1248, § 92.**

(h) NON-UNITED-STATES CITIZENS

- 68-1070 Repealed. Laws 2011, LB 465, § 2.**

(i) SCHOOL DISTRICTS AND EDUCATIONAL SERVICE UNITS

- 68-1071 Repealed. Laws 2006, LB 1248, § 92.**
- 68-1072 Repealed. Laws 2006, LB 1248, § 92.**

(j) FALSE MEDICAID CLAIMS ACT

- 68-1073 Transferred to section 68-934.**
- 68-1074 Transferred to section 68-935.**
- 68-1075 Transferred to section 68-936.**
- 68-1076 Transferred to section 68-937.**
- 68-1077 Transferred to section 68-938.**
- 68-1078 Transferred to section 68-939.**

- 68-1079 Transferred to section 68-940.
- 68-1080 Transferred to section 68-941.
- 68-1081 Transferred to section 68-942.
- 68-1082 Transferred to section 68-943.
- 68-1083 Transferred to section 68-944.
- 68-1084 Transferred to section 68-945.
- 68-1085 Transferred to section 68-946.
- 68-1086 Transferred to section 68-947.

(k) MEDICAID REFORM ACT

- 68-1087 Repealed. Laws 2006, LB 1248, § 92.
- 68-1088 Repealed. Laws 2006, LB 1248, § 92.
- 68-1089 Repealed. Laws 2006, LB 1248, § 92.
- 68-1090 Repealed. Laws 2006, LB 1248, § 92.
- 68-1091 Repealed. Laws 2006, LB 1248, § 92.
- 68-1092 Repealed. Laws 2006, LB 1248, § 92.
- 68-1093 Repealed. Laws 2006, LB 1248, § 92.
- 68-1094 Repealed. Laws 2006, LB 1248, § 92.

(l) LONG-TERM CARE PARTNERSHIP PROGRAM

- 68-1095 Repealed. Laws 2006, LB 965, § 10; Laws 2006, LB 1248, § 92.

68-1095.01 Long-Term Care Partnership Program; established; Department of Health and Human Services; duties.

The Long-Term Care Partnership Program is established. The program shall be administered by the Department of Health and Human Services in accordance with federal requirements on state long-term care partnership programs. In order to implement the program, the department shall file a state plan amendment with the federal Centers for Medicare and Medicaid Services pursuant to the requirements set forth in 42 U.S.C. 1396p(b), as such section existed on March 1, 2006.

Source: Laws 2006, LB 965, § 7; Laws 2007, LB296, § 272.

- 68-1096 Repealed. Laws 2006, LB 965, § 10; Laws 2006, LB 1248, § 92.
- 68-1097 Repealed. Laws 2006, LB 965, § 10; Laws 2006, LB 1248, § 92.
- 68-1098 Repealed. Laws 2006, LB 965, § 10; Laws 2006, LB 1248, § 92.
- 68-1099 Repealed. Laws 2006, LB 965, § 10; Laws 2006, LB 1248, § 92.

(m) COORDINATION OF BENEFITS

68-10,100 Transferred to section 68-926.

68-10,101 Transferred to section 68-927.

68-10,102 Transferred to section 68-928.

68-10,103 Transferred to section 68-929.

68-10,104 Transferred to section 68-930.

68-10,105 Transferred to section 68-931.

68-10,106 Transferred to section 68-932.

68-10,107 Transferred to section 68-933.

ARTICLE 11

AGING

(a) ADVISORY COMMITTEE ON AGING

Section

- 68-1101. Division of Medicaid and Long-Term Care Advisory Committee on Aging; created; members; appointment; term; vacancy.
- 68-1102. Repealed. Laws 1987, LB 456, § 2.
- 68-1103. Committee; officers; meetings.
- 68-1104. Committee; duties.
- 68-1105. Committee; special committees; members; compensation.
- 68-1106. Committee; federal funds; grants; gifts; acceptance; disposition.

(b) AGING NEBRASKANS TASK FORCE

- 68-1107. Repealed. Laws 2017, LB644, § 21.
- 68-1108. Department of Health and Human Services; report.
- 68-1109. Repealed. Laws 2017, LB644, § 21.
- 68-1110. Repealed. Laws 2017, LB644, § 21.

(c) AGING AND DISABILITY RESOURCE CENTER ACT

- 68-1111. Act, how cited.
- 68-1112. Legislative findings.
- 68-1113. Purpose of act; legislative intent.
- 68-1114. Terms, defined.
- 68-1115. Funding for aging and disability resource centers.
- 68-1116. Aging and disability resource centers; services.
- 68-1117. Aging and disability resource centers; funding; area agency on aging; duties.
- 68-1118. Department; report.
- 68-1119. Reimbursement; schedule.
- 68-1120. Funding; legislative intent.

(a) ADVISORY COMMITTEE ON AGING

68-1101 Division of Medicaid and Long-Term Care Advisory Committee on Aging; created; members; appointment; term; vacancy.

The Division of Medicaid and Long-Term Care Advisory Committee on Aging is created. The committee shall consist of twelve members, one from each of the planning-and-service areas as designated in the Nebraska Community Aging Services Act and the remaining members from the state at large.

Any member serving on the Department of Health and Human Services Advisory Committee on Aging on July 1, 2007, shall continue to serve until his

or her term expires. As the terms of the members expire, the Governor shall, on or before March 1 of such year, appoint or reappoint a member of the committee for a term of four years. Each area agency on aging serving a designated planning-and-service area shall recommend to the Governor the names of persons qualified to represent the senior population of the planning-and-service area. Any vacancy on the committee shall be filled for the unexpired term. A vacancy shall exist when a member of the committee ceases to be a resident of the planning-and-service area from which he or she was appointed or reappointed. The members to be appointed to represent a planning-and-service area shall be residents of the planning-and-service area from which they are appointed. Members of the advisory committee shall not be elected public officials or staff of the Department of Health and Human Services or of an area agency on aging.

Source: Laws 1965, c. 409, § 1, p. 1311; Laws 1971, LB 97, § 1; Laws 1982, LB 404, § 30; Laws 1987, LB 456, § 1; Laws 1996, LB 1044, § 341; Laws 2007, LB296, § 273.

Cross References

Nebraska Community Aging Services Act, see section 81-2201.

68-1102 Repealed. Laws 1987, LB 456, § 2.

68-1103 Committee; officers; meetings.

Members of the Division of Medicaid and Long-Term Care Advisory Committee on Aging shall meet within thirty days after their appointment to select from the members of the committee a chairperson, and such other officers as committee members deem necessary, who shall serve for a period of two years. The committee shall elect a new chairperson every two years thereafter. The committee shall meet at regular intervals at least once each year and may hold special meetings at the call of the chairperson or at the request of a majority of the members of the committee. The committee shall meet at the seat of government or such other place as the members of the committee may designate.

Source: Laws 1965, c. 409, § 3, p. 1312; Laws 1971, LB 97, § 2; Laws 1982, LB 404, § 31; Laws 1996, LB 1044, § 342; Laws 2007, LB296, § 274.

68-1104 Committee; duties.

The Division of Medicaid and Long-Term Care Advisory Committee on Aging shall advise the Division of Medicaid and Long-Term Care of the Department of Health and Human Services regarding:

- (1) The collection of facts and statistics and special studies of conditions and problems pertaining to the employment, health, financial status, recreation, social adjustment, or other conditions and problems pertaining to the general welfare of the aging of the state;
- (2) Recommendations to state and local agencies serving the aging for purposes of coordinating such agencies' activities, and reports from the various state agencies and institutions on matters within the jurisdiction of the committee;
- (3) The latest developments of research, studies, and programs being conducted throughout the nation on the problems and needs of the aging;

(4) The mutual exchange of ideas and information on the aging between federal, state, and local governmental agencies, private organizations, and individuals; and

(5) Cooperation with agencies, federal, state, and local or private organizations, in administering and supervising demonstration programs of services for aging designed to foster continued participation of older people in family and community life and to prevent insofar as possible the onset of dependency and the need for long-term institutional care.

The committee shall have the power to create special committees to undertake such special studies as members of the committee shall authorize and may include noncommittee members who are qualified in any field of activity related to the general welfare of the aging in the membership of such committees.

Source: Laws 1965, c. 409, § 4, p. 1313; Laws 1971, LB 97, § 3; Laws 1981, LB 545, § 20; Laws 1982, LB 404, § 32; Laws 1996, LB 1044, § 343; Laws 2007, LB296, § 275.

68-1105 Committee; special committees; members; compensation.

The members of the Division of Medicaid and Long-Term Care Advisory Committee on Aging, and noncommittee members serving on special committees, shall receive no compensation for their services other than reimbursement for actual and necessary expenses as provided in sections 81-1174 to 81-1177. Committee expenses and any office expenses shall be paid from funds made available to the committee by the Legislature.

Source: Laws 1965, c. 409, § 5, p. 1314; Laws 1971, LB 97, § 4; Laws 1974, LB 660, § 4; Laws 1981, LB 204, § 104; Laws 1982, LB 404, § 33; Laws 1996, LB 1044, § 344; Laws 2007, LB296, § 276.

68-1106 Committee; federal funds; grants; gifts; acceptance; disposition.

The Governor may receive federal funds or any grants and gifts on behalf of the state for such purposes as are authorized by the provisions of sections 68-1101 to 68-1106. All federal funds, grants, and gifts shall be deposited with the State Treasurer and shall be used only for such purposes agreed upon as conditions for receiving the funds, grants and gifts.

Source: Laws 1965, c. 409, § 6, p. 1314.

(b) AGING NEBRASKANS TASK FORCE

68-1107 Repealed. Laws 2017, LB644, § 21.

68-1108 Department of Health and Human Services; report.

The Department of Health and Human Services shall annually report electronically to the Legislature the percentage growth of medicaid spending for people over sixty-five years of age for no fewer than five years following acceptance of the application to the State Balancing Incentive Payments Program pursuant to section 81-3138.

Source: Laws 2014, LB690, § 3; Laws 2015, LB320, § 11; Laws 2017, LB644, § 18.

68-1109 Repealed. Laws 2017, LB644, § 21.

68-1110 Repealed. Laws 2017, LB644, § 21.

(c) AGING AND DISABILITY RESOURCE CENTER ACT

68-1111 Act, how cited.

Sections 68-1111 to 68-1120 shall be known and may be cited as the Aging and Disability Resource Center Act.

Source: Laws 2015, LB320, § 1; Laws 2018, LB793, § 1.

Operative date April 24, 2018.

68-1112 Legislative findings.

The Legislature finds that:

(1) The state should anticipate and prepare for significant growth in the number of older Nebraskans and the future needs of persons with disabilities, both of which will require costly long-term care services;

(2) The state should improve access to existing services and support for persons with disabilities;

(3) The state should provide a streamlined approach to identify the needs of older Nebraskans and persons with disabilities through uniform assessments and a single point of contact; and

(4) Nebraskans would benefit from statewide public information campaigns to educate older Nebraskans, persons with disabilities, and their caregivers on the availability of services and support.

Source: Laws 2015, LB320, § 2.

68-1113 Purpose of act; legislative intent.

The purpose of the Aging and Disability Resource Center Act is to provide information about long-term care services and support available in the home and community for older Nebraskans or persons with disabilities, family caregivers, and persons who request information or assistance on behalf of others and to assist eligible individuals to access the most appropriate public and private resources to meet their long-term care needs.

It is the intent of the Legislature that aging and disability resource centers serve as an ongoing component of Nebraska's long-term care continuum and that aging and disability resource center sites coordinate and establish partnerships as necessary with organizations specializing in serving aging persons and persons with disabilities to provide the services described in the act.

Source: Laws 2015, LB320, § 3; Laws 2018, LB793, § 2.

Operative date April 24, 2018.

68-1114 Terms, defined.

For purposes of the Aging and Disability Resource Center Act:

(1) Aging and disability resource center means a community-based entity established to provide information about long-term care services and support and to facilitate access to options counseling to assist eligible individuals and

their representatives in identifying the most appropriate services to meet their long-term care needs;

(2) Area agency on aging has the meaning found in section 81-2208;

(3) Center for independent living has the definition found in 29 U.S.C. 796a, as such section existed on January 1, 2018;

(4) Department means the State Unit on Aging of the Division of Medicaid and Long-Term Care of the Department of Health and Human Services or any successor agency designated by the state to fulfill the responsibilities of section 305(a)(1) of the federal Older Americans Act of 1965, 42 U.S.C. 3025(a)(1), as such section existed on January 1, 2018;

(5) Eligible individual means a person who has lost, never acquired, or has one or more conditions that affect his or her ability to perform basic activities of daily living that are necessary to live independently;

(6) Options counseling means a service that assists an eligible individual in need of long-term care and his or her representatives to make informed choices about the services and settings which best meet his or her long-term care needs and that uses uniform data and information collection and encourages the widest possible use of community-based options to allow an eligible individual to live as independently as possible in the setting of his or her choice;

(7) Representative means a person designated as a legal guardian, designated by a power of attorney or a health care power of attorney, or chosen by law, by a court, or by an eligible individual seeking services, but use of the term representative shall not be construed to disqualify an individual who retains all legal and personal autonomy;

(8) Uniform assessment means a single standardized tool used to assess a defined population at a specific time; and

(9) University Center for Excellence in Developmental Disability Education, Research and Service means the federally designated University Center for Excellence in Developmental Disability Education, Research and Service of the Munroe-Meyer Institute at the University of Nebraska Medical Center.

Source: Laws 2015, LB320, § 4; Laws 2018, LB793, § 3.
Operative date April 24, 2018.

68-1115 Funding for aging and disability resource centers.

The department shall award funding for aging and disability resource centers. The department shall pursue federal matching funds as applicable and allocate such funds to the aging and disability resource centers.

Source: Laws 2015, LB320, § 5; Laws 2018, LB793, § 4.
Operative date April 24, 2018.

68-1116 Aging and disability resource centers; services.

(1) The aging and disability resource centers shall be a means of promoting appropriate, effective, and efficient use of long-term care resources.

(2) Each aging and disability resource center shall provide one or more of the following services:

(a) Comprehensive information on the full range of available public and private long-term care programs, options, financing, service providers, and

resources within a community, including information on the availability of integrated long-term care;

- (b) Options counseling;
- (c) Assistance in accessing and applying for public benefits programs;
- (d) A convenient point of entry to the range of publicly supported long-term care programs for an eligible individual;
- (e) A process for identifying unmet service needs in communities and developing recommendations to respond to those unmet needs;
- (f) Facilitation of person-centered transition support to assure that an eligible individual is able to find the services and support that are most appropriate to his or her need;
- (g) Mobility management to promote the appropriate use of public transportation services by a person who does not own or is unable to operate an automobile; and
- (h) A home care provider registry that will provide a person who needs home care with the names of home care providers and information about his or her rights and responsibilities as a home care consumer.

Source: Laws 2015, LB320, § 6; Laws 2018, LB793, § 5.
Operative date April 24, 2018.

68-1117 Aging and disability resource centers; funding; area agency on aging; duties.

(1) If the department awards funding for aging and disability resource centers pursuant to section 68-1115, an area agency on aging receiving such funding shall establish a partnership with one or more lead organizations that specialize in serving persons with congenital and acquired disabilities to provide services as described in subsection (2) of section 68-1116, including, but not limited to, centers for independent living and the University Center for Excellence in Developmental Disability Education, Research and Service, for the purpose of developing an aging and disability resource center plan. After consultation with a collaboration of organizations providing advocacy, protection, and safety for aging persons and persons with congenital and acquired disabilities, the partnership may submit to the department an aging and disability resource center plan. The plan shall specify how organizations currently serving eligible individuals will be engaged in the process of delivery of services through the aging and disability resource center. The plan shall indicate how resources will be utilized by the collaborating organizations to fulfill the responsibilities of an aging and disability resource center.

(2) Two or more area agencies on aging may develop a joint aging and disability resource center plan to serve all or a portion of their planning-and-service areas. A joint plan shall provide information on how the services described in section 68-1116 will be provided in the counties to be served by the aging and disability resource center.

Source: Laws 2015, LB320, § 7; Laws 2018, LB793, § 6.
Operative date April 24, 2018.

68-1118 Department; report.

The department shall provide a report regarding the aging and disability resource centers to the Clerk of the Legislature prior to December 1, 2018, and each December 1 thereafter.

Source: Laws 2015, LB320, § 8; Laws 2018, LB793, § 7.

Operative date April 24, 2018.

68-1119 Reimbursement; schedule.

The department shall reimburse each area agency on aging operating an aging and disability resource center on a schedule agreed to by the department and the area agency on aging. Such reimbursement shall be made from (1) state funds appropriated by the Legislature, (2) federal funds allocated to the department for the purpose of establishing and operating aging and disability resource centers, and (3) other funds as available.

Source: Laws 2015, LB320, § 9; Laws 2018, LB793, § 8.

Operative date April 24, 2018.

68-1120 Funding; legislative intent.

It is the intent of the Legislature that the costs for staff, operations, and state aid necessary to carry out the Aging and Disability Resource Center Act be funded from the Nebraska Health Care Cash Fund for fiscal years 2018-19 and 2019-20.

Source: Laws 2018, LB793, § 9.

Operative date April 24, 2018.

ARTICLE 12

SOCIAL SERVICES

Section	
68-1201.	Eligibility determination; exclusion of certain assets and income.
68-1202.	Social services; services included.
68-1203.	Social services; provided or purchased; dependent children and families; aged, blind, or disabled persons.
68-1204.	Social services or specialized developmental disability services; rules and regulations; agreements; fee schedules.
68-1205.	Matching funds.
68-1206.	Social services; administration; contracts; payments; duties.
68-1207.	Department of Health and Human Services; public child welfare services; supervise; department; pilot project; caseload requirements; case plan developed.
68-1207.01.	Department of Health and Human Services; caseloads report; contents.
68-1208.	Rules and regulations; right of appeal and hearings.
68-1209.	Applications for social services; information; safeguarded.
68-1210.	Department of Health and Human Services; certain foster care children; payment rates.
68-1211.	Case management of child welfare services; legislative findings and declarations.
68-1212.	Department of Health and Human Services; cases; case manager; employee of department; duties; case management lead agency model pilot project; contract authorized; conditions, performance outcomes, and oversight; extension of contract.
68-1213.	Pilot project; evaluation by Legislature.
68-1214.	Case managers; training program; department; duties; training curriculum; contents.

68-1201 Eligibility determination; exclusion of certain assets and income.

In determining eligibility for the program for aid to dependent children pursuant to section 43-512 as administered by the State of Nebraska pursuant to the federal Temporary Assistance for Needy Families program, 42 U.S.C. 601 et seq., for the low-income home energy assistance program administered by the State of Nebraska pursuant to the federal Energy Policy Act of 2005, 42 U.S.C. 8621 to 8630, for the Supplemental Nutrition Assistance Program administered by the State of Nebraska pursuant to the federal Food and Nutrition Act of 2008, 7 U.S.C. 2011 et seq., and for the child care subsidy program established pursuant to section 68-1202, the following shall not be included in determining assets or income:

(1) Assets in or income from an educational savings account, a Coverdell educational savings account described in 26 U.S.C. 530, a qualified tuition program established pursuant to 26 U.S.C. 529, or any similar savings account or plan established to save for qualified higher education expenses as defined in section 85-1802;

(2) Income from scholarships or grants related to postsecondary education, whether merit-based, need-based, or a combination thereof;

(3) Income from postsecondary educational work-study programs, whether federally funded, funded by a postsecondary educational institution, or funded from any other source;

(4) Assets in or income from an account under a qualified program as provided in section 77-1402;

(5) Income received for participation in grant-funded research on the impact that income has on the development of children in low-income families, except that such exclusion of income must not exceed four thousand dollars per year for a maximum of four years and such exclusion shall only be made if the exclusion is permissible under federal law for each program referenced in this section. No such exclusion shall be made for such income on or after December 31, 2022; and

(6) Income from any tax credits received pursuant to the School Readiness Tax Credit Act.

Source: Laws 2014, LB359, § 1; Laws 2015, LB591, § 10; Laws 2016, LB889, § 8; Laws 2016, LB1081, § 2.

Cross References

School Readiness Tax Credit Act, see section 77-3601.

68-1202 Social services; services included.

Social services may be provided on behalf of recipients with payments for such social services made directly to vendors. Social services shall include those mandatory and optional services to former, present, or potential social services recipients provided for under the federal Social Security Act, as amended, and described by the State of Nebraska in the approved State Plan for Services. Such services may include, but shall not be limited to, foster care for children, child care, family planning, treatment for alcoholism and drug addiction, treatment for persons with an intellectual disability, health-related services, protective services for children, homemaker services, employment services, foster care for adults, protective services for adults, transportation services, home management and other functional education services, housing improvement services, legal services, adult day services, home delivered or

congregate meals, educational services, and secondary prevention services, including, but not limited to, home visitation, child screening and early intervention, and parenting education programs.

Source: Laws 1973, LB 511, § 2; Laws 1986, LB 1177, § 28; Laws 2000, LB 819, § 82; Laws 2005, LB 264, § 1; Laws 2011, LB177, § 10; Laws 2013, LB23, § 15.

68-1203 Social services; provided or purchased; dependent children and families; aged, blind, or disabled persons.

Social services shall be provided or purchased for dependent children and families, aged persons, blind individuals, and disabled individuals as defined by state law and to former and potential recipients as defined in federal regulations.

Source: Laws 1973, LB 511, § 3.

68-1204 Social services or specialized developmental disability services; rules and regulations; agreements; fee schedules.

(1) For the purpose of providing or purchasing social services described in section 68-1202, the state hereby accepts and assents to all applicable provisions of the federal Social Security Act, as amended. The Department of Health and Human Services may adopt and promulgate rules and regulations, enter into agreements, and adopt fee schedules with regard to social services described in section 68-1202.

(2) The department shall adopt and promulgate rules and regulations to administer funds under Title XX of the federal Social Security Act, as amended, designated for specialized developmental disability services.

Source: Laws 1973, LB 511, § 4; Laws 1991, LB 830, § 31; Laws 1996, LB 1044, § 345; Laws 2006, LB 994, § 66; Laws 2007, LB296, § 277; Laws 2011, LB177, § 11.

68-1205 Matching funds.

The matching funds required to obtain the federal share of the services described in section 68-1202 may come from either state, county, or donated sources in amounts and other provisions to be determined by the Department of Health and Human Services.

Source: Laws 1973, LB 511, § 5; Laws 1996, LB 1044, § 346; Laws 2006, LB 994, § 67; Laws 2007, LB296, § 278.

68-1206 Social services; administration; contracts; payments; duties.

(1) The Department of Health and Human Services shall administer the program of social services in this state. The department may contract with other social agencies for the purchase of social services at rates not to exceed those prevailing in the state or the cost at which the department could provide those services. The statutory maximum payments for the separate program of aid to dependent children shall apply only to public assistance grants and shall not apply to payments for social services. As part of the provision of social services authorized by section 68-1202, the department shall participate in the federal child care assistance program under 42 U.S.C. 618, as such section existed on January 1, 2013, and provide child care assistance to families with

incomes up to one hundred twenty-five percent of the federal poverty level for FY2013-14 and one hundred thirty percent of the federal poverty level for FY2014-15 and each fiscal year thereafter.

(2) As part of the provision of social services authorized by this section and section 68-1202, the department shall participate in the federal Child Care Subsidy program. In determining ongoing eligibility for this program, ten percent of a household's gross earned income shall be disregarded after twelve continuous months on the program and at each subsequent redetermination. At redetermination of eligibility, if a family's income exceeds one hundred thirty percent of the federal poverty level, the family shall continue to receive transitional child care assistance for up to twenty-four consecutive months or until the family income exceeds one hundred eighty-five percent of the federal poverty level. If a family's income falls to one hundred thirty percent of the federal poverty level or below, the twenty-four-month time limit in this subsection shall cease to apply until the family becomes eligible for transitional child care assistance. The amount of such child care assistance shall be based on a cost-shared plan between the recipient family and the state and shall be based on a sliding-scale methodology. A recipient family may be required to contribute a percentage of such family's gross income for child care that is no more than the cost-sharing rates in the transitional child care assistance program as of January 1, 2015, for those no longer eligible for cash assistance as provided in section 68-1724. Initial program eligibility standards shall not be impacted by the provisions of this subsection.

(3) In determining the rate or rates to be paid by the department for child care as defined in section 43-2605, the department shall adopt a fixed-rate schedule for the state or a fixed-rate schedule for an area of the state applicable to each child care program category of provider as defined in section 71-1910 which may claim reimbursement for services provided by the federal Child Care Subsidy program, except that the department shall not pay a rate higher than that charged by an individual provider to that provider's private clients. The schedule may provide separate rates for care for infants, for children with special needs, including disabilities or technological dependence, or for other individual categories of children. The schedule may also provide tiered rates based upon a quality scale rating of step three or higher under the Step Up to Quality Child Care Act. The schedule shall be effective on October 1 of every year and shall be revised annually by the department.

Source: Laws 1973, LB 511, § 6; Laws 1982, LB 522, § 44; Laws 1991, LB 836, § 26; Laws 1995, LB 401, § 22; Laws 1996, LB 1044, § 347; Laws 2006, LB 994, § 68; Laws 2007, LB296, § 279; Laws 2013, LB507, § 15; Laws 2014, LB359, § 3; Laws 2015, LB81, § 1.

Cross References

Step Up to Quality Child Care Act, see section 71-1952.

68-1207 Department of Health and Human Services; public child welfare services; supervise; department; pilot project; caseload requirements; case plan developed.

(1) The Department of Health and Human Services shall supervise all public child welfare services as described by law. The department and the pilot project described in section 68-1212 shall maintain caseloads to carry out child welfare

services which provide for adequate, timely, and indepth investigations and services to children and families. Caseloads shall range between twelve and seventeen cases as determined pursuant to subsection (2) of this section. In establishing the specific caseloads within such range, the department and the pilot project shall (a) include the workload factors that may differ due to geographic responsibilities, office location, and the travel required to provide a timely response in the investigation of abuse and neglect, the protection of children, and the provision of services to children and families in a uniform and consistent statewide manner and (b) utilize the workload criteria of the standards established as of January 1, 2012, by the Child Welfare League of America. The average caseload shall be reduced by the department in all service areas as designated pursuant to section 81-3116 and by the pilot project to comply with the caseload range described in this subsection by September 1, 2012. Beginning September 15, 2012, the department shall include in its annual report required pursuant to section 68-1207.01 a report on the attainment of the decrease according to such caseload standards. The department's annual report shall also include changes in the standards of the Child Welfare League of America or its successor.

(2) Caseload size shall be determined in the following manner: (a) If children are placed in the home, the family shall count as one case regardless of how many children are placed in the home; (b) if a child is placed out of the home, the child shall count as one case; (c) if, within one family, one or more children are placed in the home and one or more children are placed out of the home, the children placed in the home shall count as one case and each child placed out of the home shall count as one case; and (d) any child receiving services from the department or a private entity under contract with the department shall be counted as provided in subdivisions (a) through (c) of this subsection whether or not such child is a ward of the state. For purposes of this subsection, a child is considered to be placed in the home if the child is placed with his or her biological or adoptive parent or a legal guardian and a child is considered to be placed out of the home if the child is placed in a foster family home as defined in section 71-1901, a residential child-caring agency as defined in section 71-1926, or any other setting which is not the child's planned permanent home.

(3) To insure appropriate oversight of noncourt and voluntary cases when any child welfare services are provided, either by the department or by a lead agency participating in the pilot project, as a result of a child safety assessment, the department or lead agency shall develop a case plan that specifies the services to be provided and the actions to be taken by the department or lead agency and the family in each such case. Such case plan shall clearly indicate, when appropriate, that children are receiving services to prevent out-of-home placement and that, absent preventive services, foster care is the planned arrangement for the child.

(4) To carry out the provisions of this section, the Legislature shall provide funds for additional staff.

Source: Laws 1973, LB 511, § 7; Laws 1985, LB 1, § 2; Laws 1990, LB 720, § 1; Laws 1996, LB 1044, § 348; Laws 2005, LB 264, § 2; Laws 2007, LB296, § 280; Laws 2012, LB961, § 3; Laws 2013, LB265, § 38; Laws 2013, LB269, § 8.

68-1207.01 Department of Health and Human Services; caseloads report; contents.

The Department of Health and Human Services shall annually provide a report to the Legislature and Governor outlining the caseloads of child protective services, the factors considered in their establishment, and the fiscal resources necessary for their maintenance. The report submitted to the Legislature shall be submitted electronically. For 2012, 2013, and 2014, the department shall also provide electronically the report to the Health and Human Services Committee of the Legislature on or before September 15. Such report shall include:

(1) A comparison of caseloads established by the department with the workload standards recommended by national child welfare organizations along with the amount of fiscal resources necessary to maintain such caseloads in Nebraska;

(2)(a) The number of child welfare case managers employed by the State of Nebraska and child welfare services workers, providing services directly to children and families, who are under contract with the State of Nebraska or employed by a private entity under contract with the State of Nebraska and (b) statistics on the average length of employment in such positions, statewide and by service area designated pursuant to section 81-3116;

(3)(a) The average caseload of child welfare case managers employed by the State of Nebraska and child welfare services workers, providing services directly to children and families, who are under contract with the State of Nebraska or employed by a private entity under contract with the State of Nebraska and (b) the outcomes of such cases, including the number of children reunited with their families, children adopted, children in guardianships, placement of children with relatives, and other permanent resolutions established, statewide and by service area designated pursuant to section 81-3116; and

(4) The average cost of training child welfare case managers employed by the State of Nebraska and child welfare services workers, providing child welfare services directly to children and families, who are under contract with the State of Nebraska or employed by a private entity under contract with the State of Nebraska, statewide and by service area as designated pursuant to section 81-3116.

Source: Laws 1990, LB 720, § 2; Laws 1996, LB 1044, § 349; Laws 2005, LB 264, § 3; Laws 2007, LB296, § 281; Laws 2012, LB782, § 96; Laws 2012, LB1160, § 14; Laws 2013, LB222, § 22.

68-1208 Rules and regulations; right of appeal and hearings.

Authority to adopt rules and regulations and the right to appeal and hearing shall be the same in the program of social services as in the program of assistance to families and children and the aged, blind, or disabled.

Source: Laws 1973, LB 511, § 8.

68-1209 Applications for social services; information; safeguarded.

Information regarding applicants for or recipients of social services shall be safeguarded and shall be used only for purposes connected with the administration of social services.

Source: Laws 1973, LB 511, § 9.

68-1210 Department of Health and Human Services; certain foster care children; payment rates.

Notwithstanding any other provision of law, the Department of Health and Human Services shall have the authority through rule or regulation to establish payment rates for children with special needs who are in foster care and in the custody of the department.

Source: Laws 1990, LB 1022, § 1; Laws 1996, LB 1044, § 350; Laws 2007, LB296, § 282.

68-1211 Case management of child welfare services; legislative findings and declarations.

The Legislature finds and declares that:

(1) The State of Nebraska has the legal responsibility for children in its custody and accordingly should maintain the decisionmaking authority inherent in direct case management of child welfare services;

(2) Training and longevity of child welfare case managers directly impact the safety, permanency, and well-being of children receiving child welfare services;

(3) Meaningful reform of the child welfare system can occur only when competent, skilled case managers educated in evidence-based child welfare best practices are making determinations for the care of, and services to, children and families and providing first-hand, direct information for decisionmaking and high-quality evidence to the courts relating to the best interests of the children;

(4) Maintaining quality, well-trained, and experienced case managers is essential and will be a core component in child welfare reform, including statewide strategic planning and implementation. Additional resources and funds for training, support, and compensation may be required;

(5) Notwithstanding the outsourcing of case management, the Department of Health and Human Services retains legal custody of wards of the state and remains responsible for their care. Inherent in privatized case management is the loss of trained, skilled individuals employed by the state providing the stable workforce essential to fulfilling the state's responsibilities for children who are wards of the state, resulting in the risk of loss of a trained, experienced, and stable workforce;

(6) Privatization of case management of child welfare services can and has resulted in dependence on one or more private entities for the provision of an essential specialized service that is extremely difficult to replace. As a result, the risk of a private entity abandoning the contract, either voluntarily or involuntarily, creates a very high risk to the entire child welfare system, including essential child welfare services;

(7) Privatization of case management and child welfare services, including responsibilities for both service coordination and service delivery by private entities, may create conflicts of interest because the resulting financial incentives can undermine decisionmaking regarding the appropriate services that would be in the best interests of the children. Additionally, such privatization of child welfare services, including case management, can result in loss of services across the spectrum of child welfare services by reducing market competition and driving many providers out of the market;

(8) Privatization of case management and of child welfare services has resulted in issues relating to caseloads, placement, turnover, communication, and stability within the child welfare system that adversely affect outcomes and permanency for children and families; and

(9) Private lead agency contracts require complex monitoring capabilities to insure compliance and oversight of performance, including private case managers, to insure improved child welfare outcomes.

Source: Laws 2012, LB961, § 1.

68-1212 Department of Health and Human Services; cases; case manager; employee of department; duties; case management lead agency model pilot project; contract authorized; conditions, performance outcomes, and oversight; extension of contract.

(1) Except as provided in subsection (2) of this section, by April 1, 2012, for all cases in which a court has awarded a juvenile to the care of the Department of Health and Human Services according to subsection (1) of section 43-285 and for any noncourt and voluntary cases, the case manager shall be an employee of the department. Such case manager shall be responsible for and shall directly oversee: Case planning; service authorization; investigation of compliance; monitoring and evaluation of the care and services provided to children and families; and decisionmaking regarding the determination of visitation and the care, placement, medical services, psychiatric services, training, and expenditures on behalf of each juvenile under subsection (1) of section 43-285. Such case manager shall be responsible for decisionmaking and direct preparation regarding the proposed plan for the care, placement, services, and permanency of the juvenile filed with the court required under subsection (2) of section 43-285. The health and safety of the juvenile shall be the paramount concern in the proposed plan in accordance with such subsection.

(2) The department may contract with a lead agency for a case management lead agency model pilot project in the department's eastern service area as designated pursuant to section 81-3116. The department shall include in the pilot project the appropriate conditions, performance outcomes, and oversight for the lead agency, including, but not be limited to:

(a) The reporting and survey requirements of lead agencies described in sections 43-4406 and 43-4407;

(b) Departmental monitoring and functional capacities of lead agencies described in section 43-4408;

(c) The key areas of evaluation specified in subsection (3) of section 43-4409;

(d) Compliance and coordination with the development of the statewide strategic plan for child welfare program and service reform pursuant to Laws 2012, LB821; and

(e) Assurance of financial accountability and reporting by the lead agency.

(3) Before June 30, 2014, the department may extend the contract for the pilot project described in subsection (2) of this section. The lead agency shall also comply with the requirements of section 43-4204.

Source: Laws 2012, LB961, § 2; Laws 2014, LB660, § 1.

68-1213 Pilot project; evaluation by Legislature.

If the pilot project described in section 68-1212 is extended by the Department of Health and Human Services, an evaluation of the pilot project shall be completed by the Legislature prior to December 31, 2014. The Legislature shall utilize all necessary resources, including the hiring of a consultant if deemed necessary. The department and any child welfare entity which has contracted with the department shall provide all data and information to the Legislature to assist in the evaluation.

Source: Laws 2014, LB660, § 2.

68-1214 Case managers; training program; department; duties; training curriculum; contents.

To facilitate consistency in training all case managers and allow for Title IV-E reimbursement for case manager training under Title IV-E of the federal Social Security Act, as amended, the same program for initial training of case managers shall be utilized for all case managers, whether they are employed by the department or by an organization under contract with the department. The initial training of all case managers shall be provided by the department or one or more organizations under contract with the department. The department shall create a formal system for measuring and evaluating the quality of such training. All case managers shall complete a formal assessment process after initial training to demonstrate competency prior to assuming responsibilities as a case manager. The training curriculum for case managers shall include, but not be limited to: (1) An understanding of the benefits of utilizing evidence-based and promising casework practices; (2) the importance of guaranteeing service providers' fidelity to evidence-based and promising casework practices; and (3) a commitment to evidence-based and promising family-centered casework practices that utilize a least restrictive approach for children and families.

Source: Laws 2014, LB853, § 45.

ARTICLE 13

OLDER NEBRASKANS ACT

Section

- 68-1301. Repealed. Laws 1990, LB 1067, § 2.
- 68-1302. Repealed. Laws 1990, LB 1067, § 2.
- 68-1303. Repealed. Laws 1990, LB 1067, § 2.
- 68-1304. Repealed. Laws 1990, LB 1067, § 2.
- 68-1305. Repealed. Laws 1990, LB 1067, § 2.
- 68-1306. Repealed. Laws 1990, LB 1067, § 2.

68-1301 Repealed. Laws 1990, LB 1067, § 2.

68-1302 Repealed. Laws 1990, LB 1067, § 2.

68-1303 Repealed. Laws 1990, LB 1067, § 2.

68-1304 Repealed. Laws 1990, LB 1067, § 2.

68-1305 Repealed. Laws 1990, LB 1067, § 2.

68-1306 Repealed. Laws 1990, LB 1067, § 2.**ARTICLE 14****GENETICALLY HANDICAPPED PERSONS**

Section

- 68-1401. Act, how cited.
- 68-1402. Department of Health and Human Services; program for persons with genetically handicapping conditions; duties.
- 68-1403. Genetically handicapped persons; medical care program; services and treatment included.
- 68-1404. Medical care of genetically handicapping conditions; reimbursement.
- 68-1405. Department of Health and Human Services; medical care program; uniform standards of financial eligibility and payment; establish.
- 68-1406. Benefits and services; payment liability.

68-1401 Act, how cited.

Sections 68-1401 to 68-1406 shall be known and may be cited as the Genetically Handicapped Persons Act.

Source: Laws 1980, LB 989, § 1.

68-1402 Department of Health and Human Services; program for persons with genetically handicapping conditions; duties.

The Department of Health and Human Services shall establish and administer a program for the medical care of persons of all ages with genetically handicapping conditions, including cystic fibrosis, hemophilia, and sickle cell disease, through physicians and health care providers that are qualified pursuant to the regulations of the department to provide such medical services. The department shall adopt such rules and regulations pursuant to the Administrative Procedure Act, as are necessary for the implementation of the provisions of the Genetically Handicapped Persons Act. The department shall establish priorities for the use of funds and provision of services under the Genetically Handicapped Persons Act.

Source: Laws 1980, LB 989, § 2; Laws 1996, LB 1044, § 351; Laws 2006, LB 994, § 69; Laws 2007, LB296, § 283.

Cross References

Administrative Procedure Act, see section 84-920.

68-1403 Genetically handicapped persons; medical care program; services and treatment included.

The program established under the Genetically Handicapped Persons Act, which shall be under the supervision of the Department of Health and Human Services, shall include any or all of the following:

- (1) Initial intake and diagnostic evaluation;
- (2) The cost of blood transfusion and use of blood derivatives, or both;
- (3) Rehabilitation services, including reconstructive surgery;
- (4) Expert diagnosis;
- (5) Medical treatment;
- (6) Surgical treatment;
- (7) Hospital care;

- (8) Physical therapy;
- (9) Occupational therapy;
- (10) Materials and prescription drugs;
- (11) Appliances and their upkeep, maintenance, and care;
- (12) Maintenance, transportation, or care incidental to any other form of services; and
- (13) Appropriate and sufficient staff to carry out the provisions of the Genetically Handicapped Persons Act.

Source: Laws 1980, LB 989, § 3; Laws 1996, LB 1044, § 352; Laws 2006, LB 994, § 70; Laws 2007, LB296, § 284.

68-1404 Medical care of genetically handicapping conditions; reimbursement.

Reimbursement under sections 68-1401 to 68-1406 shall be made to the extent services are not available or provided to the recipient under any other private, state, or federal programs or under other contractual or legal entitlement including insurance, but no provision in sections 68-1401 to 68-1406 shall be construed as limiting in any way state participation in any federal governmental program for medical care of persons with genetically handicapping conditions.

Source: Laws 1980, LB 989, § 4.

68-1405 Department of Health and Human Services; medical care program; uniform standards of financial eligibility and payment; establish.

The Department of Health and Human Services shall establish uniform standards of financial eligibility for the treatment services under the program established under the Genetically Handicapped Persons Act, including a uniform formula for the payment of services by physicians and health care providers rendered under such program and such formula for payment shall provide for reimbursement at rates similar to those set by other federal and state programs, and private entitlements. The standards of the department for financial eligibility shall be the same as those established for Medically Handicapped Children's Services, as administered by the department. All county or district health departments shall use the uniform standards for financial eligibility and uniform formula for payment established by the department. All payments shall be used in support of the program for services established under the act.

The department shall establish payment schedules for services.

Source: Laws 1980, LB 989, § 5; Laws 1985, LB 249, § 5; Laws 1996, LB 1044, § 353; Laws 2006, LB 994, § 71; Laws 2007, LB296, § 285.

68-1406 Benefits and services; payment liability.

The health care benefits and services specified in sections 68-1401 to 68-1406, to the extent that such benefits and services are neither provided under any other federal or state law nor provided or available under other contractual or legal entitlements including insurance of the person, shall be provided to any patient who is a resident of this state and is made eligible by the provisions of sections 68-1401 to 68-1406. After such patient has utilized

such contractual or legal entitlements, the payment liability under section 68-1405 shall then be applied to the remaining cost of the genetically handicapped person's services.

Source: Laws 1980, LB 989, § 6.

ARTICLE 15

DISABLED PERSONS AND FAMILY SUPPORT

(a) DISABLED PERSONS AND FAMILY SUPPORT ACT

Section

- 68-1501. Act, how cited.
- 68-1502. Legislative findings.
- 68-1503. Terms, defined.
- 68-1504. Department of Health and Human Services; provide support; expenses; compensation.
- 68-1505. Support; families; eligibility requirements.
- 68-1506. Support; disabled person in independent living situation; eligibility requirements.
- 68-1507. Eligibility; department determine.
- 68-1508. Support; allocation of costs; basis.
- 68-1509. Department; needs and eligibility criteria; factors.
- 68-1510. Support; supplemental to other programs; availability of other programs; department; duties.
- 68-1511. Department; payment of support; provide assistance; providers of programs and services.
- 68-1512. Support; maximum allowance; limitations.
- 68-1513. Department; review needs of support recipient.
- 68-1514. Denial of support; hearing provided.
- 68-1515. Rules and regulations; contents.
- 68-1516. Department; provide support; when; priorities.
- 68-1517. Department; expenditure of funds authorized.
- 68-1518. Department; report; contents.
- 68-1519. Obtaining support in violation of sections; violation; penalty.

(b) NEBRASKA LIFESPAN RESPITE SERVICES PROGRAM

- 68-1520. Legislative findings.
- 68-1521. Terms, defined.
- 68-1522. Nebraska Lifespan Respite Services Program; established.
- 68-1523. Program; administration.
- 68-1524. Program; requirements.
- 68-1525. Services; requirements.
- 68-1526. Rules and regulations.
- 68-1527. Department; duties.
- 68-1528. Use of funds.

(a) DISABLED PERSONS AND FAMILY SUPPORT ACT

68-1501 Act, how cited.

Sections 68-1501 to 68-1519 shall be known and may be cited as the Disabled Persons and Family Support Act.

Source: Laws 1981, LB 389, § 1.

68-1502 Legislative findings.

The Legislature finds and declares that:

- (1) The family is vital to the fundamental development of each person in the State of Nebraska;

(2) A growing number of families are searching for ways to provide for disabled family members in the home rather than placing them in state or private institutional or residential facilities;

(3) Employable disabled persons should be encouraged to engage in employment and ultimately become self-supporting;

(4) Necessary services should be available to families caring for a disabled family member so that disabled persons may remain in the home, obtain employment if possible, and maintain a more independent form of living;

(5) The State of Nebraska should make every effort to preserve the family unit, to insure that decisions of providing for a disabled person are based on the best interests of the disabled person and the family, and to provide services to disabled persons which promote independent living and employability; and

(6) The State of Nebraska should promote cost-effective health care alternatives for disabled persons.

Source: Laws 1981, LB 389, § 2.

68-1503 Terms, defined.

For purposes of the Disabled Persons and Family Support Act:

(1) Department means the Department of Health and Human Services;

(2) Disabled family member or disabled person means a person who has a medically determinable severe, chronic disability which:

(a) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(b) Is likely to continue indefinitely;

(c) Results in substantial functional limitations in two or more of the following areas of major life activity: (i) Self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, (vii) work skills or work tolerance, and (viii) economic sufficiency; and

(d) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, vocational rehabilitation, or other services which are of lifelong or extended duration and are individually planned and coordinated; and

(3) Other support programs means all forms of local, state, or federal assistance, grants-in-aid, educational programs, or support provided by public or private funds for disabled persons or their families.

Source: Laws 1981, LB 389, § 3; Laws 1996, LB 1044, § 354; Laws 2006, LB 994, § 72; Laws 2007, LB296, § 286.

68-1504 Department of Health and Human Services; provide support; expenses; compensation.

The department may provide support to families providing for a disabled member in the home and to disabled persons in independent living situations. Such support may be made available to compensate for present and future expenses, including, but not limited to:

(1) The purchase or lease of special equipment or architectural modifications of a home made to improve or facilitate the care, treatment, therapy, general living conditions, or access of the disabled person;

(2) Medical, surgical, therapeutic, diagnostic, and other health services related to the disability or disabilities of the disabled person;

(3) Counseling or training programs which assist the family in providing proper care for the disabled family member or assist the disabled person in an independent living situation and which provide for the special needs of the family or disabled person;

(4) Attendant care, respite care, home health aid services, homemaker services, and chore services which provide assistance with training, routine body functions, dressing, preparation, consumption of food, and ambulation as well as providing respite assistance to the family;

(5) Transportation services for the disabled person; and

(6) Transportation, room, and board costs incurred by the family or disabled person during evaluations or treatment of the disabled family member which receive prior approval from the department.

Source: Laws 1981, LB 389, § 4.

68-1505 Support; families; eligibility requirements.

Families may be eligible to receive support pursuant to sections 68-1501 to 68-1519 if the family (1) resides in the State of Nebraska, (2) has a family member who is disabled and is (a) living at home or (b) residing in a state or private institutional or residential facility but could return home under sections 68-1501 to 68-1519, and (3) has insufficient income to provide for the total cost of care for the disabled family member.

Source: Laws 1981, LB 389, § 5.

68-1506 Support; disabled person in independent living situation; eligibility requirements.

A disabled person in an independent living situation may be eligible to receive support pursuant to sections 68-1501 to 68-1519 if the person (1) is a resident of the State of Nebraska, (2) requires care to remain within an independent living situation, and (3) has insufficient income to provide for the total cost of such care.

Source: Laws 1981, LB 389, § 6; Laws 1985, LB 87, § 1.

68-1507 Eligibility; department determine.

The determination of disability and the need for programs and services shall be supported by current program plans, evaluations, and medical reports which shall be provided to the department upon request. The department may decide that additional evaluations of the disabled person are necessary to determine eligibility or the need for programs and services. Such additional evaluations shall be provided by the department.

Source: Laws 1981, LB 389, § 7.

68-1508 Support; allocation of costs; basis.

The department may allocate costs for programs and services between the department and the family or the disabled person in an independent living situation. Such cost allocation shall be based on the need for support pursuant to sections 68-1501 to 68-1519 and shall not be based on income guidelines or fee schedules established for other programs administered by the department.

Source: Laws 1981, LB 389, § 8.

68-1509 Department; needs and eligibility criteria; factors.

The department, in considering the needs and eligibility criteria of families and disabled persons, shall consider various factors, including, but not limited to:

(1) Total family income, except that the amount which the spouse may designate as provided in section 68-922 shall be excluded in determining total family income per month;

(2) The cost of providing supplemental services to the family or the disabled person;

(3) The need for each program or service received by the family or the disabled person;

(4) The eligibility of the family or the disabled person for other support programs;

(5) The costs of providing for the family or the disabled person in an independent living situation, notwithstanding the special circumstances of providing for a disabled person;

(6) The number of persons in the family; and

(7) The availability of insurance to cover the cost of needed programs and services.

If assets have been designated for an individual in accordance with section 68-922, such assets shall not be considered in determining the eligibility for support of the individual's disabled spouse.

Source: Laws 1981, LB 389, § 9; Laws 1988, LB 419, § 16; Laws 1989, LB 362, § 16; Laws 2006, LB 1248, § 71.

68-1510 Support; supplemental to other programs; availability of other programs; department; duties.

The support available under sections 68-1501 to 68-1519 shall be supplemental to other support programs for which the family or disabled person is eligible and is not intended to reduce the responsibility for the provision of services and support by such other programs. The department shall (1) determine whether any request under sections 68-1501 to 68-1519 is appropriate to and available from other support programs, (2) deny any request if the requested assistance is appropriate to and available from other support programs, and (3) provide information and referral to all families and disabled persons whose request for assistance was denied pursuant to this section on the procedure for applying for other appropriate and available support programs.

Source: Laws 1981, LB 389, § 10.

68-1511 Department; payment of support; provide assistance; providers of programs and services.

The department may, by agreement with the head of the family or disabled person, provide support pursuant to sections 68-1501 to 68-1519 (1) directly to the family or the disabled person, or (2) directly to qualified programs and services. The department shall assist each family or disabled person receiving support under sections 68-1501 to 68-1519 in locating qualified programs and services. The family or the disabled person may be required to be responsible for contracting for those programs and services which the department approves and shall furnish the department a copy of each contract. The family or the disabled person may compensate the providers of such programs and services directly. Providers of programs and services shall be required to comply with all standards established by the department for participation pursuant to sections 68-1501 to 68-1519.

Source: Laws 1981, LB 389, § 11.

68-1512 Support; maximum allowance; limitations.

The maximum support allowable under sections 68-1501 to 68-1519 shall be (1) three hundred dollars per month per disabled person averaged over any one-year period or (2) three hundred dollars per month per family averaged over any one-year period for the first disabled family member plus one hundred fifty dollars per month averaged over any one-year period for each additional disabled family member. The department shall not provide support, pursuant to sections 68-1501 to 68-1519, to any family or disabled person whose gross income less the cost of medical or other care specifically related to the disability exceeds the median family income for a family of four in Nebraska, except that the department shall make adjustments for the actual size of the family.

Source: Laws 1981, LB 389, § 12; Laws 1985, LB 87, § 2.

68-1513 Department; review needs of support recipient.

The department shall review the needs of each family or disabled person receiving support under sections 68-1501 to 68-1519 on a regular basis, as established by the department, or upon the showing of a change of circumstances by the head of the family.

Source: Laws 1981, LB 389, § 13.

68-1514 Denial of support; hearing provided.

The chief executive officer of the department, or his or her designated representative, shall provide an opportunity for a fair hearing to any family or disabled person who is denied support pursuant to the Disabled Persons and Family Support Act.

Source: Laws 1981, LB 389, § 14; Laws 1996, LB 1044, § 355; Laws 2006, LB 994, § 73; Laws 2007, LB296, § 287.

68-1515 Rules and regulations; contents.

The department shall adopt and promulgate rules and regulations, as necessary, to implement sections 68-1501 to 68-1519, including:

- (1) Standards and procedures for determining approval of qualified programs and services to participate under sections 68-1501 to 68-1519;

(2) Identification of the need for programs and services of families providing for a disabled family member in the home or of disabled persons in an independent living situation;

(3) Identification of the need for support to families and disabled persons and procedures for the provision of support under sections 68-1501 to 68-1519;

(4) Procedures for review of each family or disabled person receiving support under sections 68-1501 to 68-1519;

(5) Procedures and guidelines for determining priorities, eligibility standards, and eligibility criteria for the selection of families and disabled persons to participate in programs pursuant to sections 68-1501 to 68-1519;

(6) Procedures and guidelines for determining when support pursuant to sections 68-1501 to 68-1519 would be a duplication of support from other support programs or would result in excessive support to a family or disabled person; and

(7) An annual determination of the family income guidelines necessary to carry out the provisions of section 68-1512. Such guidelines shall be based on population, per capita income, and other data provided by the United States Department of Commerce, Bureau of the Census.

Source: Laws 1981, LB 389, § 15.

68-1516 Department; provide support; when; priorities.

The department shall begin providing support pursuant to sections 68-1501 to 68-1519 on July 1, 1982. From July 1, 1982, to July 1, 1986, the department shall provide support on a priority basis to families and disabled persons eligible to receive support pursuant to sections 68-1501 to 68-1519. The department shall give priority to those families providing for a severely or multiple disabled family member and to severely or multiple disabled persons in independent living situations. Priority shall also be given to those families and disabled persons (1) with the greatest need for support to maintain the disabled person in the family home or independent living situation, (2) who have the greatest possibility of maintaining the disabled person in the home or independent living situation on a continual basis, and (3) who demonstrate that support pursuant to sections 68-1501 to 68-1519 will provide the most cost-effective form of care for the disabled person.

Source: Laws 1981, LB 389, § 16.

68-1517 Department; expenditure of funds authorized.

The department may expend funds for the administration of the Disabled Persons and Family Support Act and for support pursuant to the act.

Source: Laws 1981, LB 389, § 17; Laws 1990, LB 917, § 1.

68-1518 Department; report; contents.

The department shall file an annual report with the Governor and the Clerk of the Legislature on or before January 1 of each year beginning January 1, 1983. The report submitted to the Clerk of the Legislature shall be submitted electronically. Such report shall include:

(1) The number of families and disabled persons applying for support pursuant to the Disabled Persons and Family Support Act and the number of families and disabled persons receiving support pursuant to the act;

(2) The types of services and programs being applied for and those being provided through the act;

(3) The effects of the support provided under the act on the disabled and their families; and

(4) Any proposals for amendment of the act.

Source: Laws 1981, LB 389, § 18; Laws 2012, LB782, § 97.

68-1519 Obtaining support in violation of sections; violation; penalty.

Any person who by means of a willfully false statement or representation, or by impersonation or other device, obtains or attempts to obtain, or who aids or abets any other person in obtaining support under sections 68-1501 to 68-1519 shall, upon conviction thereof, be punished pursuant to section 68-1017.

Source: Laws 1981, LB 389, § 19.

(b) NEBRASKA LIFESPAN RESPITE SERVICES PROGRAM

68-1520 Legislative findings.

The Legislature finds that:

(1) Supporting the efforts of families and caregivers to care for individuals at home is efficient, cost effective, and humane. Families receiving occasional respite services are less likely to request admission of an individual to a nursing home, foster care, or other out-of-home care at public expense;

(2) Respite services reduce family and caregiver stress, enhance family and caregiver coping ability, and strengthen family and caregiver ability to meet the challenging demands of caring for family members;

(3) Respite services reduce the risk of abuse and neglect of children, senior citizens, and other vulnerable groups; and

(4) Coordinated, noncategorical respite services must be available locally to provide reliable respite services when needed by families and caregivers regardless of where they live in Nebraska.

Source: Laws 1999, LB 148, § 1.

68-1521 Terms, defined.

For purposes of sections 68-1520 to 68-1528:

(1) Caregiver means an individual providing ongoing care for an individual unable to care for himself or herself;

(2) Community lifespan respite services program means a noncategorical respite services program that:

(a) Is operated by a community-based private nonprofit or for-profit agency or a public agency that provides respite services;

(b) Receives funding through the Nebraska Lifespan Respite Services Program established under section 68-1522;

(c) Serves an area in one or more of the six regional services areas of the department;

- (d) Acts as a single local source for respite services information and referral; and
- (e) Facilitates access to local respite services;
- (3) Department means the Department of Health and Human Services;
- (4) Noncategorical care means care without regard to the age, type of special needs, or other status of the individual receiving care;
- (5) Provider means an individual or agency selected by a family or caregiver to provide respite services to an individual with special needs;
- (6) Respite care means the provision of short-term relief to primary caregivers from the demands of ongoing care for an individual with special needs; and
- (7) Respite services includes:
 - (a) Recruiting and screening of paid and unpaid respite care providers;
 - (b) Identifying local training resources and organizing training opportunities for respite care providers;
 - (c) Matching of families and caregivers with providers and other types of respite care;
 - (d) Linking families and caregivers with payment resources;
 - (e) Identifying, coordinating, and developing community resources for respite services;
 - (f) Quality assurance and evaluation; and
 - (g) Assisting families and caregivers to identify respite care needs and resources.

Source: Laws 1999, LB 148, § 2; Laws 2006, LB 994, § 74; Laws 2007, LB296, § 288.

68-1522 Nebraska Lifespan Respite Services Program; established.

The department shall establish the Nebraska Lifespan Respite Services Program to develop and encourage statewide coordination of respite services and to work with community-based private nonprofit or for-profit agencies, public agencies, and interested citizen groups in the establishment of community lifespan respite services programs. The Nebraska Lifespan Respite Services Program shall:

- (1) Provide policy and program development support, including, but not limited to, data collection and outcome measures;
- (2) Identify and promote resolution of local and state-level policy concerns;
- (3) Provide technical assistance to community lifespan respite services programs;
- (4) Develop and distribute respite services information;
- (5) Promote the exchange of information and coordination among state and local governments, community lifespan respite services programs, agencies serving individuals unable to care for themselves, families, and respite care advocates to encourage efficient provision of respite services and reduce duplication of effort;
- (6) Ensure statewide access to community lifespan respite services programs; and

(7) Monitor and evaluate implementation of community lifespan respite services programs.

Source: Laws 1999, LB 148, § 3; Laws 2006, LB 994, § 75; Laws 2007, LB296, § 289.

68-1523 Program; administration.

(1) The department, through the Nebraska Lifespan Respite Services Program, shall coordinate the establishment of community lifespan respite services programs. The program shall accept proposals submitted in the form and manner required by the program from community-based private nonprofit or for-profit agencies or public agencies that provide respite services to operate community lifespan respite services programs. According to criteria established by the department, the Nebraska Lifespan Respite Services Program shall designate and fund agencies described in this section to operate community lifespan respite services programs.

(2) The department shall create the position of program specialist for the Nebraska Lifespan Respite Services Program to administer the program.

Source: Laws 1999, LB 148, § 4; Laws 2006, LB 994, § 76; Laws 2007, LB296, § 290.

68-1524 Program; requirements.

Each community lifespan respite services program established pursuant to section 68-1523 shall:

(1) Involve key local individuals and agencies in the community lifespan respite services program planning process; and

(2) Create an advisory committee to advise the community lifespan respite services program on how the program may best serve the needs of families and caregivers of individuals unable to care for themselves. Other members shall include respite services providers, representatives of local service agencies, consumers, and other community representatives. Committee membership shall represent senior citizens, individuals with special needs, and families at risk of abuse and neglect.

Source: Laws 1999, LB 148, § 5.

68-1525 Services; requirements.

Respite services made available through the Nebraska Lifespan Respite Services Program shall:

(1) Include a flexible array of respite care options responsive to family and caregiver needs and available before families and caregivers are in a crisis;

(2) Be sensitive to the unique needs, strengths, and cultural values of an individual, family, or caregiver;

(3) Offer the most efficient access to an array of coordinated respite services that are built on existing community support and services;

(4) Be driven by community strengths, needs, and resources; and

(5) Use a variety of funds and resources, including, but not limited to:

(a) Family or caregiver funds;

(b) Private and volunteer resources;

- (c) Public funds; and
- (d) Exchange of care among families or caregivers.

Source: Laws 1999, LB 148, § 6.

68-1526 Rules and regulations.

The department shall adopt and promulgate rules and regulations for the operation and administration of the Nebraska Lifespan Respite Services Program, including, but not limited to:

- (1) Criteria, procedures, and timelines for designation of the community-based private nonprofit or for-profit agencies or public agencies that will receive funding to provide respite services under community lifespan respite services programs;
- (2) A requirement that each community lifespan respite services program publicize the telephone number and address where families and caregivers may contact the program; and
- (3) Procedures and guidelines for determining priorities, eligibility standards, and eligibility criteria for the selection of caregivers to participate in programs funded under the Nebraska Lifespan Respite Services Program.

Source: Laws 1999, LB 148, § 7; Laws 2001, LB 692, § 1.

68-1527 Department; duties.

The department shall establish at least six community lifespan respite services programs in Nebraska on or before July 1, 2000.

Source: Laws 1999, LB 148, § 8.

68-1528 Use of funds.

The Nebraska Lifespan Respite Services Program may use the funds appropriated to the program for the following purposes:

- (1) The purposes established in sections 68-1522 and 68-1523;
- (2) Costs related to developing provider recruitment and training, information and referral, outreach, and other components of the provision of respite services;
- (3) One-time-only startup costs related to the establishment of the community lifespan respite services program; and
- (4) Minimum administrative costs for operating the Nebraska Lifespan Respite Services Program.

Source: Laws 1999, LB 148, § 9.

ARTICLE 16

HOMELESS SHELTER ASSISTANCE

- Section
- 68-1601. Act, how cited.
- 68-1602. Legislative intent.
- 68-1603. Department, defined.
- 68-1604. Homeless Shelter Assistance Trust Fund; created; use; investment.
- 68-1605. Department; grants; requirements; application; considerations.
- 68-1606. Grant money; use.
- 68-1607. Recipients; requirements.

Section
68-1608. Rules and regulations.

68-1601 Act, how cited.

Sections 68-1601 to 68-1608 shall be known and may be cited as the Homeless Shelter Assistance Trust Fund Act.

Source: Laws 1992, LB 1192, § 1.

68-1602 Legislative intent.

It is the intent of the Homeless Shelter Assistance Trust Fund Act to provide funds aimed at meeting the needs of homeless individuals and other individuals with locally identified and documented special housing needs.

It is further the intent of the act that homeless individuals shall include persons who lack a fixed, regular, and adequate nighttime residence and who are living in a publicly or privately subsidized hotel, motel, shelter, or other temporary living quarters or any place not designated for or ordinarily used as regular sleeping accommodations for human beings. The act is not intended to include those individuals in prison or detained pursuant to state or federal law.

Source: Laws 1992, LB 1192, § 2.

68-1603 Department, defined.

For purposes of the Homeless Shelter Assistance Trust Fund Act, department shall mean the Department of Health and Human Services.

Source: Laws 1992, LB 1192, § 3; Laws 2001, LB 516, § 1.

68-1604 Homeless Shelter Assistance Trust Fund; created; use; investment.

The Homeless Shelter Assistance Trust Fund is hereby created. The fund shall include the proceeds raised from the documentary stamp tax and remitted for such fund pursuant to section 76-903 and transfers authorized by the Legislature. Money remitted to such fund shall be used by the department (1) for grants to eligible shelter providers as set out in section 68-1605 for the purpose of assisting in the alleviation of homelessness, to provide temporary and permanent shelters for homeless persons, to encourage the development of projects which link housing assistance to programs promoting the concept of self-sufficiency, and to address the needs of the migrant farmworker and (2) to aid in defraying the expenses of administering the Homeless Shelter Assistance Trust Fund Act, which shall not exceed seventy-five thousand dollars in any fiscal year.

Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1992, LB 1192, § 4; Laws 1994, LB 1066, § 62; Laws 2001, LB 516, § 2; Laws 2005, LB 301, § 8; Laws 2013, LB199, § 28.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

68-1605 Department; grants; requirements; application; considerations.

(1) The department shall use the funds in the Homeless Shelter Assistance Trust Fund to finance grants for projects or programs that provide for persons or families with special housing needs.

(2) Projects and programs to which funds shall be provided include eligible community, neighborhood-based, housing-assistance organizations, institutions, associations, and societies or corporations that:

(a) Are exempt from taxation under section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01;

(b) Do not discriminate on the basis of age, religion, sex, race, color, or national origin;

(c) Provide residential housing for at least eight hours of every twenty-four-hour period; and

(d) Operate a drug-free premises.

(3) The department shall establish an advisory committee consisting of individuals and groups involved with housing issues, in particular those pertaining to persons or families with special housing needs, to advise and assist the department in establishing criteria, priorities, and guidelines for eligibility requirements, application requirements and dates, public notification, and monitoring and shall assist the department in adopting and promulgating rules and regulations for providing grants from the fund.

(4) An application submitted by an organization representing a number of eligible applicants may be considered even though the representing organization may itself not qualify under this section.

(5) In making grants pursuant to the Homeless Shelter Assistance Trust Fund Act, the department shall consider, but not be limited to, the following factors:

(a) The number of night-lodging units provided by the applicant as measured by the number of persons housed per night;

(b) Participation by the applicant in community planning processes and activities aimed at preventing and alleviating homelessness;

(c) Other verifiable units of service provided by the applicant; and

(d) The geographic distribution of funds.

Source: Laws 1992, LB 1192, § 5; Laws 1995, LB 574, § 59; Laws 2001, LB 516, § 3.

68-1606 Grant money; use.

Grant money may be used by eligible recipients in meeting the special housing needs of individuals including meals, transportation, counseling, housekeeping, care management, and personal emergency response needs.

Source: Laws 1992, LB 1192, § 6.

68-1607 Recipients; requirements.

Recipients of grant money shall, upon request, submit to the department records for verification of the information included on applications submitted for grants from the Homeless Shelter Assistance Trust Fund.

Source: Laws 1992, LB 1192, § 7; Laws 2001, LB 516, § 4.

68-1608 Rules and regulations.

The department shall adopt and promulgate rules and regulations to carry out the Homeless Shelter Assistance Trust Fund Act.

Source: Laws 1992, LB 1192, § 8.

ARTICLE 17

WELFARE REFORM

(a) WELFARE REFORM ACT

Section

- 68-1701. Repealed. Laws 1996, LB 892, § 3.
- 68-1702. Repealed. Laws 1996, LB 892, § 3.
- 68-1703. Repealed. Laws 1996, LB 892, § 3.
- 68-1704. Repealed. Laws 1996, LB 892, § 3.
- 68-1705. Repealed. Laws 1996, LB 892, § 3.
- 68-1706. Repealed. Laws 1996, LB 892, § 3.
- 68-1707. Repealed. Laws 1996, LB 892, § 3.
- 68-1708. Act, how cited.
- 68-1709. Legislative findings and declarations.
- 68-1710. Legislative intent.
- 68-1711. Assessment tool; state agencies; utilize.
- 68-1712. Repealed. Laws 1995, LB 455, § 27.
- 68-1713. Department of Health and Human Services; implementation of policies; transitional health care benefits.
- 68-1714. Repealed. Laws 1995, LB 455, § 27.
- 68-1715. Rules and regulations.
- 68-1716. Repealed. Laws 2005, LB 301, § 78.
- 68-1717. Repealed. Laws 1997, LB 864, § 20.
- 68-1718. Financial assistance; comprehensive assets assessment required; contents; periodic assessments.
- 68-1719. Self-sufficiency contract; purpose.
- 68-1720. Self-sufficiency contract; contents.
- 68-1721. Principal wage earner and other nonexempt members of applicant family; duties.
- 68-1722. Legislative findings; case management practices and supportive services; department; powers and duties; extension of time limit on cash assistance; when.
- 68-1723. Cash assistance; requirements; extension of time limit; when; hearing; review.
- 68-1724. Cash assistance; duration; reimbursement of expenses; when; conditions; extension of time limit.
- 68-1725. Alternative payment systems authorized.
- 68-1725.01. Repealed. Laws 2004, LB 940, § 4.
- 68-1726. Assistance under act; eligibility factors.
- 68-1727. Family resource centers; legislative intent.
- 68-1728. Services for families and children; legislative findings and declarations.
- 68-1729. Repealed. Laws 2007, LB 296, § 815.
- 68-1730. Repealed. Laws 2007, LB 296, § 815.
- 68-1731. Family services; legislative intent.
- 68-1732. Integrated programs and policies; legislative intent.
- 68-1733. Planning process; state agencies; duty to establish.
- 68-1734. Application process; legislative intent; common assessment tool.
- 68-1735. Creating self-sufficiency contract and meeting work activity requirement; applicant under twenty years of age; activities authorized.
- 68-1735.01. Creating self-sufficiency contract and meeting work activity requirement; applicant; activities authorized.
- 68-1735.02. Department of Health and Human Services; report; contents.
- 68-1735.03. Legislative intent.
- 68-1735.04. Repealed. Laws 2016, LB1081, § 8.

Section

(b) GOVERNOR'S ROUNDTABLE

68-1736. Repealed. Laws 2008, LB 797, § 35.

68-1737. Repealed. Laws 2008, LB 797, § 35.

(c) TRIBAL LANDS AND SERVICE AREAS

68-1738. Department of Health and Human Services; duty.

(a) WELFARE REFORM ACT

68-1701 Repealed. Laws 1996, LB 892, § 3.

68-1702 Repealed. Laws 1996, LB 892, § 3.

68-1703 Repealed. Laws 1996, LB 892, § 3.

68-1704 Repealed. Laws 1996, LB 892, § 3.

68-1705 Repealed. Laws 1996, LB 892, § 3.

68-1706 Repealed. Laws 1996, LB 892, § 3.

68-1707 Repealed. Laws 1996, LB 892, § 3.

68-1708 Act, how cited.

Sections 68-1708 to 68-1735.03 shall be known and may be cited as the Welfare Reform Act.

Source: Laws 1994, LB 1224, § 8; Laws 1995, LB 455, § 8; Laws 1996, LB 892, § 1; Laws 1997, LB 864, § 11; Laws 2000, LB 1352, § 2; Laws 2012, LB507, § 1; Laws 2016, LB1081, § 3.

68-1709 Legislative findings and declarations.

The Legislature finds and declares that the primary purpose of the welfare programs in this state is to provide temporary, transitional support for Nebraska families so that economic self-sufficiency is attained in as expeditious a manner as possible. The Legislature further finds and declares that this goal is to be accomplished through individualized assessments of the personal and economic resources of each applicant for public assistance and through the use of individualized self-sufficiency contracts.

The Legislature further finds and declares that it is in the best interests of the state, its citizens, and especially those receiving public assistance through welfare programs in this state that the welfare system be reformed to support, stabilize, and enhance individual and family life in Nebraska by: (1) Pursuing efforts to help Nebraskans avoid poverty and prevent the need for welfare; (2) eliminating existing complex and conflicting welfare programs; (3) creating a simplified program in place of the existing complex and conflicting welfare programs; (4) removing disincentives to work and promoting economic self-sufficiency; (5) providing individuals and families the support needed to move from public assistance to economic self-sufficiency; (6) changing public assistance from entitlements to temporary, contract-based support; (7) removing barriers to public assistance for intact families; (8) basing the duration of public assistance upon the individual circumstances of each applicant within the time limits allowed under federal law; (9) providing continuing assistance and support for persons sixty-five years of age or over and for individuals and

families with physical, mental, or intellectual limitations preventing total economic self-sufficiency; (10) supporting regular school attendance of children; and (11) promoting public sector, private sector, individual, and family responsibility.

Source: Laws 1994, LB 1224, § 9; Laws 2007, LB351, § 4.

68-1710 Legislative intent.

It is the intent of the Legislature that, with the passage of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, the Department of Health and Human Services implement the Welfare Reform Act in a manner consistent with federal law.

Source: Laws 1997, LB 864, § 12; Laws 2007, LB351, § 5.

68-1711 Assessment tool; state agencies; utilize.

State agencies, including the Department of Health and Human Services and the Department of Labor, which assess training options, job readiness, adult basic skills, aptitudes, interests, workplace maturity, and career development of applicants for services shall utilize a common, comprehensive assessment tool.

Source: Laws 1994, LB 1224, § 11; Laws 1995, LB 455, § 9; Laws 1996, LB 1044, § 356.

68-1712 Repealed. Laws 1995, LB 455, § 27.

68-1713 Department of Health and Human Services; implementation of policies; transitional health care benefits.

(1) The Department of Health and Human Services shall implement the following policies:

- (a) Permit Work Experience in Private for-Profit Enterprises;
- (b) Permit Job Search;
- (c) Permit Employment to be Considered a Program Component;
- (d) Make Sanctions More Stringent to Emphasize Participant Obligations;
- (e) Alternative Hearing Process;
- (f) Permit Adults in Two-Parent Households to Participate in Activities Based on Their Self-Sufficiency Needs;
- (g) Eliminate Exemptions for Individuals with Children Between the Ages of 12 Weeks and Age Six;
- (h) Providing Poor Working Families with Transitional Child Care to Ease the Transition from Welfare to Self-Sufficiency;
- (i) Provide Transitional Health Care for 12 Months After Termination of ADC if funding for such transitional medical assistance is available under Title XIX of the federal Social Security Act, as amended, as described in section 68-906;
- (j) Require Adults to Ensure that Children in the Family Unit Attend School;
- (k) Encourage Minor Parents to Live with Their Parents;
- (l) Establish a Resource Limit of \$4,000 for a single individual and \$6,000 for two or more individuals for ADC;
- (m) Exclude the Value of One Vehicle Per Family When Determining ADC Eligibility;

(n) Exclude the Cash Value of Life Insurance Policies in Calculating Resources for ADC;

(o) Establish the Supplemental Nutrition Assistance Program as a Continuous Benefit with Eligibility Reevaluated with Yearly Redeterminations;

(p) Establish a Budget the Gap Methodology Whereby Countable Earned Income is Subtracted from the Standard of the Need and Payment is Based on the Difference or Maximum Payment Level, Whichever is Less. That this Gap be Established at a Level that Encourages Work but at Least at a Level that Ensures that Those Currently Eligible for ADC do not Lose Eligibility Because of the Adoption of this Methodology;

(q) Adopt an Earned Income Disregard described in section 68-1726 in the ADC Program, One Hundred Dollars in the Related Medical Assistance Program, and Income and Assets Described in section 68-1201;

(r) Disregard Financial Assistance Described in section 68-1201 and Other Financial Assistance Intended for Books, Tuition, or Other Self-Sufficiency Related Use;

(s) Culture: Eliminate the 100-Hour Rule, The Quarter of Work Requirement, and The 30-Day Unemployed/Underemployed Period for ADC-UP Eligibility;

(t) Make ADC a Time-Limited Program; and

(u) Adopt an Unearned Income Disregard described in section 68-1201 in the ADC Program, the Supplemental Nutrition Assistance Program, and the Child Care Subsidy Program established pursuant to section 68-1202.

(2) The Department of Health and Human Services shall (a) apply for a waiver to allow for a sliding-fee schedule for the population served by the caretaker relative program or (b) pursue other public or private mechanisms, to provide for transitional health care benefits to individuals and families who do not qualify for cash assistance. It is the intent of the Legislature that transitional health care coverage be made available on a sliding-scale basis to individuals and families with incomes up to one hundred eighty-five percent of the federal poverty level if other health care coverage is not available.

Source: Laws 1994, LB 1224, § 13; Laws 1995, LB 455, § 10; Laws 1996, LB 1044, § 357; Laws 1997, LB 864, § 13; Laws 2002, Second Spec. Sess., LB 8, § 3; Laws 2006, LB 994, § 77; Laws 2007, LB351, § 6; Laws 2009, LB288, § 30; Laws 2014, LB359, § 4; Laws 2015, LB607, § 2; Laws 2016, LB1081, § 4.

Subsection (1)(d) of this section must be read in conjunction with the limitations and standards expressly provided by the Legislature. *Davio v. Nebraska Dept. of Health & Human Servs.*, 280 Neb. 263, 786 N.W.2d 655 (2010).

68-1714 Repealed. Laws 1995, LB 455, § 27.

68-1715 Rules and regulations.

The Department of Health and Human Services shall adopt and promulgate rules and regulations to carry out the Welfare Reform Act.

Source: Laws 1994, LB 1224, § 15; Laws 1995, LB 455, § 11; Laws 1996, LB 1044, § 358.

68-1716 Repealed. Laws 2005, LB 301, § 78.

68-1717 Repealed. Laws 1997, LB 864, § 20.

68-1718 Financial assistance; comprehensive assets assessment required; contents; periodic assessments.

(1) At the time an individual or a family applies for financial assistance pursuant to section 43-512, an assessment shall be conducted. Eligibility determination shall begin with a comprehensive assets assessment, in which the applicant and case manager collaborate to identify the economic and personal resources available to the applicant. Each applicant shall work with only one case manager who shall facilitate all service provision.

(2) Each applicant's personal resources shall be assessed in the comprehensive assets assessment. For purposes of this section, personal resources shall include education, vocational skills, employment history, health, life skills, personal strengths, and support from family and the community. This assessment shall also include a determination of the applicant's goals, employment background, educational background, housing needs, child care and transportation needs, health care needs, and other barriers to economic self-sufficiency.

(3) The comprehensive assets assessment shall structure personal resources information and control subjectivity. The assessment shall be used:

(a) To develop a self-sufficiency contract under section 68-1719 and promote services which specifically lead to self-sufficiency; and

(b) To determine if the applicant should be referred to other community resources for assistance.

(4) Periodic assessments, including an exit assessment prior to implementation of the time limit on cash assistance as provided in section 68-1724, shall be conducted with recipients to establish if the terms of the self-sufficiency contract have been met by the recipient family and by the state.

Source: Laws 1994, LB 1224, § 18; Laws 1997, LB 864, § 14; Laws 2007, LB351, § 7.

68-1719 Self-sufficiency contract; purpose.

Based on the results of the comprehensive assets assessment under section 68-1718, the applicant and the case manager shall develop a self-sufficiency contract. The contract shall be built upon the premise of urgent action. To ensure that the applicant can make constant, measurable progress toward self-sufficiency, goals shall be set with timelines and benchmarks that facilitate forward momentum. In the case of an entire family applying for assistance, each family member shall have responsibilities within the self-sufficiency contract.

Source: Laws 1994, LB 1224, § 19.

"Participation in the program," within the meaning of section 68-1724, refers to participation in a self-sufficiency contract as described in this section, and the family cap established by section 68-1724 does not apply to families who are not participating in a self-sufficiency contract. *Mason v. State*, 267 Neb. 44, 627 N.W.2d 28 (2003).

The self-sufficiency contracts created under this section are creatures of statute, and not common law. The self-sufficiency

contract serves as a means for the State and a recipient of public assistance to memorialize a specific plan of action by which a recipient can attain self-sufficiency, but is not given legal effect by the agreement of the parties and therefore is not a contract as that term is generally used in civil law. The enforceability of statutory requirements cannot be voided in the same manner as a civil contract that is created solely by agreement of the parties. *Kosmicki v. State*, 264 Neb. 887, 652 N.W.2d 883 (2002).

68-1720 Self-sufficiency contract; contents.

The responsibilities, roles, and expectations of the applicant family, the case manager, and all other service providers shall be detailed in the self-sufficiency contract developed under section 68-1719. The contract shall be signed by the applicant and by the case manager representing the state. The state and the applicant shall fulfill their respective terms of the contract.

Source: Laws 1994, LB 1224, § 20.

68-1721 Principal wage earner and other nonexempt members of applicant family; duties.

(1) Under the self-sufficiency contract developed under section 68-1719, the principal wage earner and other nonexempt members of the applicant family shall be required to participate in one or more of the following approved activities, including, but not limited to, education, job skills training, work experience, job search, or employment.

(2) Education shall consist of the general education development program, high school, Adult Basic Education, English as a Second Language, postsecondary education, or other education programs approved in the contract.

(3) Job skills training shall include vocational training in technical job skills and equivalent knowledge. Activities shall consist of formalized, technical job skills training, apprenticeships, on-the-job training, or training in the operation of a microbusiness enterprise. The types of training, apprenticeships, or training positions may include, but need not be limited to, the ability to provide services such as home repairs, automobile repairs, respite care, foster care, personal care, and child care. Job skills training shall be prioritized and approved for occupations that facilitate economic self-sufficiency.

(4) The purpose of work experience shall be to improve the employability of applicants by providing work experience and training to assist them to move promptly into regular public or private employment. Work experience shall mean unpaid work in a public, private, for-profit, or nonprofit business or organization. Work experience placements shall take into account the individual's prior training, skills, and experience. A placement shall not exceed six months.

(5) Job search shall assist adult members of recipient families in finding their own jobs. The emphasis shall be placed on teaching the individual to take responsibility for his or her own job development and placement.

(6) Employment shall consist of work for pay. The employment may be full-time or part-time but shall be adequate to help the recipient family reach economic self-sufficiency.

(7) For purposes of creating the self-sufficiency contract and meeting the applicant's work activity requirement, an applicant shall be allowed to engage in vocational training that leads to an associate degree, a diploma, or a certificate for a minimum of twenty hours per week for up to thirty-six months.

Source: Laws 1994, LB 1224, § 21; Laws 1995, LB 455, § 14; Laws 2006, LB 994, § 78; Laws 2007, LB351, § 8; Laws 2009, LB458, § 1; Laws 2012, LB842, § 1; Laws 2016, LB1081, § 5.

The postsecondary education provision of this section was intended to permit a recipient of public assistance to complete a course of postsecondary education within the cash assistance limitation period of section 68-1724. *Kosmicki v. State*, 264 Neb. 887, 652 N.W.2d 883 (2002).

68-1722 Legislative findings; case management practices and supportive services; department; powers and duties; extension of time limit on cash assistance; when.

The Legislature finds that the state has responsibilities to help ensure the success of the self-sufficiency contract for each recipient. The Department of Health and Human Services shall employ case management practices and supportive services to the extent necessary to facilitate movement toward self-

sufficiency within the time limit on participation as provided in section 68-1724.

The department may purchase case management services. It is the intent of the Legislature that any case management utilized by the department shall include standards which emphasize communication skills; appropriate interviewing techniques; and methods for positive feedback, support, encouragement, and counseling. The case management provided shall also include a recognition of family dynamics and emphasize working with all family members; shall respect diversity; shall empower individuals; and shall include recognizing, capitalizing, and building on a family's strengths and existing support network. It is the intent of the Legislature that generally a case manager would have a family caseload of no more than seventy cases.

Supportive services shall include, but not be limited to, assistance with transportation expenses, participation and work expenses, parenting education, family planning, budgeting, and relocation to provide for specific needs critical to the recipient's or the recipient family's self-sufficiency contract. For purposes of this section, family planning shall not include abortion counseling, referral for abortion, or funding for abortion. If the state fails to meet the specific terms of the self-sufficiency contract, the time limit on cash assistance under section 68-1724 shall be extended.

Source: Laws 1994, LB 1224, § 22; Laws 1996, LB 1044, § 361; Laws 2007, LB351, § 9.

68-1723 Cash assistance; requirements; extension of time limit; when; hearing; review.

(1) Cash assistance shall be provided only while recipients are actively engaged in the specific activities outlined in the self-sufficiency contract developed under section 68-1719. If the recipients are not actively engaged in these activities, no cash assistance shall be paid.

(2) Recipient families with at least one adult with the capacity to work, as determined by the comprehensive assets assessment, shall participate in the self-sufficiency contract as a condition of receiving cash assistance. If any such adult fails to cooperate in carrying out the terms of the contract, the family shall be ineligible for cash assistance.

(a) Adult members of recipient families whose youngest child is between the ages of twelve weeks and six months shall engage in an individually determined number of part-time hours in activities such as family nurturing, preemployment skills, or education.

(b) Participation in activities outlined in the self-sufficiency contract shall not be required for one parent of a recipient family whose youngest child is under the age of twelve weeks.

(c) Cash assistance under section 68-1724 shall be extended: (i) To cover the twelve-week postpartum recovery period for children born to recipient families; and (ii) to recognize special medical conditions of such children requiring the presence of at least one adult member of the recipient family, as determined by the state, which extend past the age of twelve weeks.

(d) Full participation in the activities outlined in the self-sufficiency contract shall be required for adult members of a two-parent recipient family whose youngest child is over the age of six months. Part-time participation in activities

outlined in the self-sufficiency contract shall be required for an adult member of a single-parent recipient family whose youngest child is under the age of six years.

(e) In cases in which the only adults in the recipient family do not have parental responsibility which shall mean such adults are not the biological or adoptive parents or stepparents of the children in their care, and assistance is requested for all family members, including the adults, the family shall participate in the activities outlined in the self-sufficiency contract as a condition of receiving cash assistance.

(f) Unemployed or underemployed absent and able-to-work parents of children in the recipient family may participate in self-sufficiency contracts, employment, and payment of child support, and such absent parents may be required to pay all or a part of the costs of the self-sufficiency contracts.

(3) Individual recipients and recipient families shall have the right to request an administrative hearing (a) for the purpose of reviewing compliance by the state with the terms of the self-sufficiency contract or (b) for the purpose of reviewing a determination by the department that the recipient or recipient family has not complied with the terms of the self-sufficiency contract. It is the intent of the Legislature that an independent mediation appeal process be developed as an option to be considered.

Source: Laws 1994, LB 1224, § 23; Laws 2007, LB351, § 10.

This section does not authorize the removal of Medicaid benefits as a sanction for noncompliance with an Employment First contract. Davio v. Nebraska Dept. of Health & Human Servs., 280 Neb. 263, 786 N.W.2d 655 (2010).

68-1724 Cash assistance; duration; reimbursement of expenses; when; conditions; extension of time limit.

(1) Cash assistance shall be provided for a period or periods of time not to exceed a total of sixty months for recipient families with children subject to the following:

(a) If the state fails to meet the specific terms of the self-sufficiency contract developed under section 68-1719, the sixty-month time limit established in this section shall be extended;

(b) The sixty-month time period for cash assistance shall begin within the first month of eligibility;

(c) When no longer eligible to receive cash assistance, assistance shall be available to reimburse work-related child care expenses even if the recipient family has not achieved economic self-sufficiency. The amount of such assistance shall be based on a cost-shared plan between the recipient family and the state which shall provide assistance up to one hundred eighty-five percent of the federal poverty level for up to twenty-four months. A recipient family may be required to contribute up to twenty percent of such family's gross income for child care. It is the intent of the Legislature that transitional health care coverage be made available on a sliding-scale basis to individuals and families with incomes up to one hundred eighty-five percent of the federal poverty level if other health care coverage is not available; and

(d) The self-sufficiency contract shall be revised and cash assistance extended when there is no job available for adult members of the recipient family. It is the intent of the Legislature that available job shall mean a job which results in an income of at least equal to the amount of cash assistance that would have

been available if receiving assistance minus unearned income available to the recipient family.

The department shall develop policy guidelines to allow for cash assistance to persons who have received the maximum cash assistance provided by this section and who face extreme hardship without additional assistance. For purposes of this section, extreme hardship means a recipient family does not have adequate cash resources to meet the costs of the basic needs of food, clothing, and housing without continuing assistance or the child or children are at risk of losing care by and residence with their parent or parents.

(2) Cash assistance conditions under the Welfare Reform Act shall be as follows:

(a) Adults in recipient families shall mean individuals at least nineteen years of age living with and related to a child eighteen years of age or younger and shall include parents, siblings, uncles, aunts, cousins, or grandparents, whether the relationship is biological, adoptive, or step;

(b) The payment standard shall be based upon family size;

(c) The adults in the recipient family shall ensure that the minor children regularly attend school. Education is a valuable personal resource. The cash assistance provided to the recipient family may be reduced when the parent or parents have failed to take reasonable action to encourage the minor children of the recipient family ages sixteen and under to regularly attend school. No reduction of assistance shall be such as may result in extreme hardship. It is the intent of the Legislature that a process be developed to insure communication between the case manager, the parent or parents, and the school to address issues relating to school attendance;

(d) Two-parent families which would otherwise be eligible under section 43-504 or a federally approved waiver shall receive cash assistance under this section;

(e) For minor parents, the assistance payment shall be based on the minor parent's income. If the minor parent lives with at least one parent, the family's income shall be considered in determining eligibility and cash assistance payment levels for the minor parent. If the minor parent lives independently, support shall be pursued from the parents of the minor parent. If the absent parent of the minor's child is a minor, support from his or her parents shall be pursued. Support from parents as allowed under this subdivision shall not be pursued when the family income is less than three hundred percent of the federal poverty guidelines; and

(f) For adults who are not biological or adoptive parents or stepparents of the child or children in the family, if assistance is requested for the entire family, including the adults, a self-sufficiency contract shall be entered into as provided in section 68-1719. If assistance is requested for only the child or children in such a family, such children shall be eligible after consideration of the family's income and if (i) the family cooperates in pursuing child support and (ii) the minor children of the family regularly attend school.

Source: Laws 1994, LB 1224, § 24; Laws 1995, LB 455, § 15; Laws 2007, LB351, § 11.

"Participation in the program," within the meaning of this section, refers to participation in a self-sufficiency contract as described in section 68-1719, and the family cap established by this section does not apply to families who are not participating in a self-sufficiency contract. *Mason v. State*, 267 Neb. 44, 627 N.W.2d 28 (2003).

The postsecondary education provision of section 68-1721 was intended to permit a recipient of public assistance to complete a course of postsecondary education within the cash assistance limitation period of this section. *Kosmicki v. State*, 264 Neb. 887, 652 N.W.2d 883 (2002).

68-1725 Alternative payment systems authorized.

The Department of Health and Human Services may either develop an electronic benefit system for purposes of eliminating as much paper and coupon conveyance of public assistance as is practical or provide cash in lieu of coupons.

Source: Laws 1994, LB 1224, § 25; Laws 1996, LB 1044, § 362.

68-1725.01 Repealed. Laws 2004, LB 940, § 4.

68-1726 Assistance under act; eligibility factors.

Based on the comprehensive assets assessment, each individual and family receiving assistance under the Welfare Reform Act shall reach for his or her highest level of economic self-sufficiency or the family's highest level of economic self-sufficiency. The following eligibility factors shall apply:

(1) Financial resources, excluding the primary home and furnishings and the primary automobile, shall not exceed four thousand dollars in value for a single individual and six thousand dollars in value for two or more individuals;

(2) Available resources, including, but not limited to, savings accounts and real estate, shall be used in determining financial resources, except that income and assets described in sections 68-1201 and 68-1713 shall not be included in determination of available resources under this section;

(3) Income received by family members, except income earned by children attending school and except as provided in section 68-1201, shall be considered in determining total family income. Income earned by an individual or a family by working shall be treated differently than unearned income in determining the amount of cash assistance as follows:

(a) Earned income shall be counted in determining the level of cash assistance after disregarding an amount of earned income as follows:

(i) Twenty percent of gross earned income shall be disregarded to test for eligibility during the application process for aid to dependent children assistance; and

(ii) For aid to dependent children program participants and for applicants after eligibility has been established, fifty percent of the gross earned income shall be disregarded;

(b) Financial assistance provided by other programs that support the transition to economic self-sufficiency shall be considered to the extent the payments are intended to provide for life's necessities; and

(c) Financial assistance or those portions of it intended for books, tuition, or other self-sufficiency-related expenses shall not be counted in determining financial resources. Such assistance shall include, but not be limited to, school grants, scholarships, vocational rehabilitation payments, Job Training Partnership Act payments, income or assets described in section 68-1201, and education-related loans or other loans that are expected to be repaid; and

(4) Individuals and families shall pursue potential sources of economic support, including, but not limited to, unemployment compensation and child support.

Source: Laws 1994, LB 1224, § 26; Laws 1997, LB 864, § 15; Laws 2014, LB359, § 5; Laws 2015, LB607, § 3; Laws 2016, LB1081, § 6.

68-1727 Family resource centers; legislative intent.

It is the intent of the Legislature that family resource centers be considered a priority in the utilization of the federal funding allocated to Nebraska through Family Preservation and Support Services, as provided by Public Law 103-66, 1993.

Source: Laws 1994, LB 1224, § 27.

68-1728 Services for families and children; legislative findings and declarations.

(1) The Legislature hereby finds and declares that: (a) The family is the cornerstone of society; (b) families have the primary responsibility for supporting their children; and (c) families require the support of their community and the state to fulfill their duties.

(2) The Legislature further finds that: (a) Many state initiatives for improving or reforming the systems of service delivery for children and their families have been identified and are underway within Nebraska; (b) there is a need to coordinate and promote communication in these initiatives to identify common visions and approaches and to establish linkages across the areas of health services, social services, family support services, mental health services, education, economic development, labor, and juvenile justice at the state level and the community level; and (c) these initiatives need continued support in order to empower communities and families to provide and promote an integrated, efficient, and effective service delivery system.

(3) The Legislature declares that it shall be the policy of the State of Nebraska (a) to promote the development of a statewide system of comprehensive, coordinated, family-centered, community-based, and culturally competent services for children and their families to assure that services help build strong families and provide appropriate environments for children and (b) that these services should be available, accessible, and equitable and, whenever possible, be located together.

Source: Laws 1994, LB 1224, § 28.

68-1729 Repealed. Laws 2007, LB 296, § 815.

68-1730 Repealed. Laws 2007, LB 296, § 815.

68-1731 Family services; legislative intent.

The Legislature recognizes that parents should continue to have the primary responsibility for meeting the needs of their children but that if a family requires services it should be able to receive services which are available, accessible, and equitable. It is the intent of the Legislature that such services should be coordinated between agencies serving common populations and that

whenever possible a plan should be implemented for location of services together to provide consistent, efficient, and effective services.

Source: Laws 1994, LB 1224, § 31.

68-1732 Integrated programs and policies; legislative intent.

It is the intent of the Legislature that the Department of Health and Human Services, the State Department of Education, the Department of Labor, the Office of Probation Administration, the Department of Correctional Services, and the Department of Economic Development will have integrated programs and policies when serving a common customer. Organizational mergers and operating agreements shall be developed within state government which bring together the state's community-based child-serving and family-serving resources in the areas of health care services, social services, mental health services, developmental disabilities services, juvenile justice, and education. Such actions shall eliminate the need for the public to understand the differing roles, responsibilities, and services of the agencies enumerated in this section and their affiliates.

Source: Laws 1994, LB 1224, § 32; Laws 1996, LB 1044, § 365; Laws 2007, LB296, § 291.

68-1733 Planning process; state agencies; duty to establish.

The state agencies enumerated in section 68-1732 shall establish a planning process to:

- (1) Assist communities in joining together to assess their resources and strengths;
- (2) Assess what services are needed in participating communities and coordinate how such services should be developed and provided;
- (3) Identify and support a plan for location of related human services and agencies together;
- (4) Identify human services that already exist and decide how to coordinate such services most efficiently;
- (5) Link existing planning processes;
- (6) Promote decategorization of selected federal and state programs to bring about greater cohesiveness and flexibility when locating services together; and
- (7) Cooperate and coordinate with building owners and other business owners in the community to assess the most efficient way to locate or relocate agencies.

Source: Laws 1994, LB 1224, § 33.

68-1734 Application process; legislative intent; common assessment tool.

It is the intent of the Legislature that the agencies enumerated in section 68-1732, whenever possible, shall develop a uniform, consolidated, and streamlined application process for all programs serving children and families. The application process shall be electronically linked so families will not have to repeat the application process. The state shall assist communities and eliminate barriers in developing a common application form and make the form available across the state. The application process shall provide for common data collection, intake, referral, and assessment and shall be ongoing. A single

common assessment tool shall be developed which captures information once for use in making the full range of state, local, and community support available as part of the cash assistance program established under the Welfare Reform Act.

Source: Laws 1994, LB 1224, § 34.

68-1735 Creating self-sufficiency contract and meeting work activity requirement; applicant under twenty years of age; activities authorized.

For purposes of creating the self-sufficiency contract and meeting the applicant's work activity requirement, an applicant who is under twenty years of age and is married or a single head of household is deemed to have met the work activity requirement in a month if he or she:

- (1) Maintains satisfactory attendance during such month at secondary school, a general education development program, or the equivalent; or
- (2) Participates in education directly related to employment for an average of at least twenty hours per week during such month. Education directly related to employment includes, but is not limited to, Adult Basic Education, English as a Second Language, and a general education development program.

Source: Laws 2012, LB507, § 2.

68-1735.01 Creating self-sufficiency contract and meeting work activity requirement; applicant; activities authorized.

(1) For purposes of this section, target work rate means fifty percent less the caseload reduction credit submitted by the Nebraska Department of Health and Human Services to the United States Department of Health and Human Services for the fiscal year.

(2) For purposes of creating the self-sufficiency contract and meeting the applicant's work activity requirement, an applicant shall be deemed to have met the work activity requirement in a month if he or she is engaged in education directly related to employment for an average of at least twenty hours per week during such month. Education directly related to employment includes, but is not limited to, Adult Basic Education, English as a Second Language, and a general education development program.

(3) No state funds shall be used to carry out this section unless such state funds meet the definition of qualified state expenditures under the federal Temporary Assistance for Needy Families program, 42 U.S.C. 609(a)(7)(B)(i).

(4) If Nebraska's work participation rate under the federal Temporary Assistance for Needy Families program, 42 U.S.C. 601 et seq., does not exceed the target work rate by ten percentage points in any month, the Department of Health and Human Services may suspend the requirements of subsection (2) of this section until the work participation rate exceeds the target work rate by ten percentage points for three consecutive months.

Source: Laws 2012, LB507, § 3; Laws 2013, LB240, § 1.

68-1735.02 Department of Health and Human Services; report; contents.

The Department of Health and Human Services shall submit electronically an annual report to the Legislature on October 1 on the following:

(1) The number of persons on a quarterly basis participating in a self-sufficiency contract who are engaged in one of the following activities:

- (a) An associate degree program;
- (b) A vocational education program not leading to an associate degree;
- (c) Postsecondary education other than a program described in subdivision (1)(a) or (b) of this section;
- (d) Adult Basic Education;
- (e) English as a Second Language; or
- (f) A general education development program; and

(2) The number of persons participating in a self-sufficiency contract who obtain or maintain employment for six months, twelve months, eighteen months, and twenty-four months after such persons are no longer eligible for cash assistance due to obtaining employment.

Source: Laws 2012, LB507, § 4; Laws 2013, LB222, § 23.

68-1735.03 Legislative intent.

It is the intent of the Legislature that the Department of Health and Human Services carry out the requirements of sections 68-1735 to 68-1735.02 within the limits of its annual appropriation.

Source: Laws 2012, LB507, § 5.

68-1735.04 Repealed. Laws 2016, LB1081, § 8.

(b) GOVERNOR’S ROUNDTABLE

68-1736 Repealed. Laws 2008, LB 797, § 35.

68-1737 Repealed. Laws 2008, LB 797, § 35.

(c) TRIBAL LANDS AND SERVICE AREAS

68-1738 Department of Health and Human Services; duty.

The Department of Health and Human Services shall make state funds available which are appropriated to meet the needs of people living on tribal lands or in tribal service areas as defined in section 43-1503 if the people residing on tribal lands or in tribal services areas choose to operate their own welfare reform programs.

Source: Laws 1999, LB 475, § 2.

ARTICLE 18

ICF/DD REIMBURSEMENT PROTECTION ACT

Section	
68-1801.	Act, how cited.
68-1802.	Terms, defined.
68-1803.	Tax; rate; collection; report.
68-1804.	ICF/DD Reimbursement Protection Fund; created; use; allocation; investment; report.
68-1805.	State medicaid plan; application for amendment; tax; when due.
68-1806.	Collection of tax; discontinued; when; effect.

Section	
68-1806.01.	Tax; use.
68-1807.	Failure to pay tax; penalty.
68-1808.	Refund; procedure.
68-1809.	Rules and regulations.

68-1801 Act, how cited.

Sections 68-1801 to 68-1809 shall be known and may be cited as the ICF/DD Reimbursement Protection Act.

Source: Laws 2004, LB 841, § 2; Laws 2013, LB23, § 16.

68-1802 Terms, defined.

For purposes of the ICF/DD Reimbursement Protection Act:

- (1) Department means the Department of Health and Human Services;
- (2) Intermediate care facility for persons with developmental disabilities has the definition found in section 71-421;
- (3) Medical assistance program means the program established pursuant to the Medical Assistance Act; and
- (4) Net revenue means the revenue paid to an intermediate care facility for persons with developmental disabilities for resident care, room, board, and services less contractual adjustments and does not include revenue from sources other than operations, including, but not limited to, interest and guest meals.

Source: Laws 2004, LB 841, § 3; Laws 2006, LB 1248, § 72; Laws 2007, LB296, § 292; Laws 2013, LB23, § 17.

Cross References

Medical Assistance Act, see section 68-901.

68-1803 Tax; rate; collection; report.

(1) Each intermediate care facility for persons with developmental disabilities shall pay a tax equal to a percentage of its net revenue for the most recent State of Nebraska fiscal year. The percentage shall be (a) six percent prior to January 1, 2008, (b) five and one-half percent beginning January 1, 2008, through September 30, 2011, and (c) six percent beginning October 1, 2011.

(2) Taxes collected under this section shall be remitted to the State Treasurer for credit to the ICF/DD Reimbursement Protection Fund.

(3) Taxes collected pursuant to this section shall be reported on a separate line on the cost report of the intermediate care facility for persons with developmental disabilities, regardless of how such costs are reported on any other cost report or income statement. The department shall recognize such tax as an allowable cost within the state plan for reimbursement of intermediate care facilities for persons with developmental disabilities which participate in the medical assistance program. The tax shall be a direct pass-through and shall not be subject to cost limitations.

Source: Laws 2004, LB 841, § 4; Laws 2006, LB 1248, § 73; Laws 2007, LB292, § 2; Laws 2013, LB23, § 18.

68-1804 ICF/DD Reimbursement Protection Fund; created; use; allocation; investment; report.

(1) The ICF/DD Reimbursement Protection Fund is created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Interest and income earned by the fund shall be credited to the fund.

(2) Beginning July 1, 2014, the department shall use the ICF/DD Reimbursement Protection Fund, including the matching federal financial participation under Title XIX of the Social Security Act, as amended, for purposes of enhancing rates paid under the medical assistance program to intermediate care facilities for persons with developmental disabilities and for an annual contribution to community-based programs for persons with developmental disabilities as specified in subsection (4) of this section, exclusive of the reimbursement paid under the medical assistance program and any other state appropriations to intermediate care facilities for persons with developmental disabilities.

(3) For FY2011-12 through FY2013-14, proceeds from the tax imposed pursuant to section 68-1803 shall be remitted to the State Treasurer for credit to the ICF/DD Reimbursement Protection Fund for allocation as follows:

- (a) First, fifty-five thousand dollars for administration of the fund;
- (b) Second, the amount needed to reimburse intermediate care facilities for persons with developmental disabilities for the cost of the tax;
- (c) Third, three hundred twelve thousand dollars for community-based services for persons with developmental disabilities;
- (d) Fourth, six hundred thousand dollars or such lesser amount as may be available in the fund for non-state-operated intermediate care facilities for persons with developmental disabilities, in addition to any continuation appropriations percentage increase provided by the Legislature to nongovernmental intermediate care facilities for persons with developmental disabilities under the medical assistance program, subject to approval by the federal Centers for Medicare and Medicaid Services of the department's annual application amending the medicaid state plan reimbursement methodology for intermediate care facilities for persons with developmental disabilities; and
- (e) Fifth, the remainder of the proceeds to the General Fund.

(4) For FY2016-17 and each fiscal year thereafter, the ICF/DD Reimbursement Protection Fund shall be used as follows:

- (a) First, fifty-five thousand dollars to the department for administration of the fund;
- (b) Second, payment to the intermediate care facilities for persons with developmental disabilities for the cost of the tax;
- (c) Third, three hundred twelve thousand dollars, in addition to any federal medicaid matching funds, for payment to providers of community-based services for persons with developmental disabilities;
- (d) Fourth, one million dollars to the General Fund; and
- (e) Fifth, rebase rates under the medical assistance program in accordance with the medicaid state plan as defined in section 68-907. In calculating rates, the proceeds of the tax provided for in section 68-1803 and not utilized under subdivisions (a), (b), (c), and (d) of this subsection shall be used to enhance rates in non-state-operated intermediate care facilities for persons with devel-

opmental disabilities by increasing the annual inflation factor to the extent allowed to ensure federal financial participation for the department's payments to intermediate care facilities for persons with developmental disabilities.

(5) The Division of Medicaid and Long-Term Care of the Department of Health and Human Services shall report electronically, no later than December 1 of each year, to the Health and Human Services Committee of the Legislature and the Revenue Committee of the Legislature the amounts collected from each payer of the tax pursuant to section 68-1803 and the amount of each disbursement from the ICF/DD Reimbursement Protection Fund.

Source: Laws 2004, LB 841, § 5; Laws 2010, LB701, § 1; Laws 2013, LB23, § 19; Laws 2017, LB605, § 1.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

68-1805 State medicaid plan; application for amendment; tax; when due.

(1) On or before July 1, 2004, the department shall submit an application to the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services amending the state medicaid plan to provide for utilization of money in the ICF/DD Reimbursement Protection Fund to increase medicaid payments to intermediate care facilities for persons with developmental disabilities.

(2) The tax imposed under section 68-1803 is not due and payable until such amendment to the state medicaid plan is approved by the Centers for Medicare and Medicaid Services.

Source: Laws 2004, LB 841, § 6; Laws 2013, LB23, § 20.

68-1806 Collection of tax; discontinued; when; effect.

(1) Until July 1, 2014:

(a) Collection of the tax imposed by section 68-1803 shall be discontinued if:

(i) The amendment to the state medicaid plan described in section 68-1805 is disapproved by the Centers for Medicare and Medicaid Services;

(ii) The department reduces rates paid to intermediate care facilities for persons with developmental disabilities to an amount less than the rates effective September 1, 2003; or

(iii) The department or any other state agency attempts to utilize the money in the ICF/DD Reimbursement Protection Fund for any use other than uses permitted pursuant to the ICF/DD Reimbursement Protection Act; and

(b) If collection of the tax is discontinued as provided in subdivision (a) of this subsection, all money in the fund shall be returned to the intermediate care facilities for persons with developmental disabilities from which the tax was collected on the same basis as the tax was assessed.

(2) Beginning on July 1, 2014:

(a) The department shall discontinue collection of the tax provided for in section 68-1803:

(i) If federal financial participation to match the payments by intermediate care facilities for persons with developmental disabilities pursuant to section 68-1803 becomes unavailable under federal law or the rules and regulations of

the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services; or

(ii) If money in the ICF/DD Reimbursement Protection Fund is appropriated, transferred, or otherwise expended for any use other than uses permitted pursuant to the ICF/DD Reimbursement Protection Act; and

(b) If collection of the tax provided for in section 68-1803 is discontinued as provided in subdivision (a) of this subsection, the money in the ICF/DD Reimbursement Protection Fund shall be returned to the intermediate care facilities for persons with developmental disabilities from which the tax was collected on the same basis as collected.

Source: Laws 2004, LB 841, § 7; Laws 2013, LB23, § 21.

68-1806.01 Tax; use.

The department shall collect the tax provided for in section 68-1803 and remit the tax to the State Treasurer for credit to the ICF/DD Reimbursement Protection Fund. Beginning July 1, 2014, no proceeds from the tax provided for in section 68-1803, including the federal match, shall be placed in the General Fund unless otherwise provided in the ICF/DD Reimbursement Protection Act.

Source: Laws 2013, LB23, § 22.

68-1807 Failure to pay tax; penalty.

(1) An intermediate care facility for persons with developmental disabilities that fails to pay the tax required by section 68-1803 shall be subject to a penalty of five hundred dollars per day of delinquency. The total amount of the penalty assessed under this section shall not exceed five percent of the tax due from the intermediate care facility for persons with developmental disabilities for the year for which the tax is assessed.

(2) The department shall collect the penalties and remit them to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2004, LB 841, § 8; Laws 2007, LB296, § 293; Laws 2013, LB23, § 23.

68-1808 Refund; procedure.

An intermediate care facility for persons with developmental disabilities that has paid a tax that is not required by section 68-1803 may file a claim for refund with the department. The department may by rule and regulation establish procedures for filing and consideration of such claims.

Source: Laws 2004, LB 841, § 9; Laws 2013, LB23, § 24.

68-1809 Rules and regulations.

The department may adopt and promulgate rules and regulations to carry out the ICF/DD Reimbursement Protection Act.

Source: Laws 2004, LB 841, § 10; Laws 2013, LB23, § 25.

ARTICLE 19

NURSING FACILITY QUALITY ASSURANCE ASSESSMENT ACT

Section

- 68-1901. Act, how cited.
- 68-1902. Definitions, where found.
- 68-1903. Bed-hold day, defined.
- 68-1904. Continuing care retirement community, defined.
- 68-1905. Department, defined.
- 68-1906. Gross inpatient revenue, defined.
- 68-1907. Hospital, defined.
- 68-1908. Life care contract, defined.
- 68-1909. Medical assistance program, defined.
- 68-1910. Medicare day, defined.
- 68-1911. Medicare upper payment limit, defined.
- 68-1912. Nursing facility, defined.
- 68-1913. Quality assurance assessment, defined.
- 68-1914. Resident day, defined.
- 68-1915. Skilled nursing facility, defined.
- 68-1916. Total resident days, defined.
- 68-1917. Quality assurance assessment; payment; computation.
- 68-1918. Providers exempt.
- 68-1919. Reduction of quality assurance assessment; when.
- 68-1920. Aggregate quality assurance assessment; limitation.
- 68-1921. Quality assurance assessment; payments; form.
- 68-1922. Department; collect quality assurance assessment; remit to State Treasurer.
- 68-1923. Quality assurance assessment; report; medicaid cost report; how treated.
- 68-1924. Underpayment or overpayment; notice.
- 68-1925. Failure to pay; penalty; waiver; when; withholding authorized; collection methods authorized.
- 68-1926. Nursing Facility Quality Assurance Fund; created; use; investment.
- 68-1927. Application for amendment to medicaid state plan; approval; effect; resubmission of waiver application.
- 68-1928. Department; discontinue collection of quality assurance assessments; when; return of money.
- 68-1929. Aggrieved party; hearing; petition.
- 68-1930. Rules and regulations.

68-1901 Act, how cited.

Sections 68-1901 to 68-1930 shall be known and may be cited as the Nursing Facility Quality Assurance Assessment Act.

Source: Laws 2011, LB600, § 1.

68-1902 Definitions, where found.

For purposes of the Nursing Facility Quality Assurance Assessment Act, the definitions found in sections 68-1903 to 68-1916 apply.

Source: Laws 2011, LB600, § 2.

68-1903 Bed-hold day, defined.

Bed-hold day means a day during which a bed is kept open pursuant to the bed-hold policy of the nursing facility or skilled nursing facility which permits a resident to return to the facility and resume residence in the facility after a transfer to a hospital or therapeutic leave.

Source: Laws 2011, LB600, § 3.

68-1904 Continuing care retirement community, defined.

Continuing care retirement community means an operational entity or related organization which, under a life care contract, provides a continuum of services, including, but not limited to, independent living, assisted-living, nursing facility, and skilled nursing facility services within the same or a contiguous municipality as defined in section 18-2410.

Source: Laws 2011, LB600, § 4.

68-1905 Department, defined.

Department means the Department of Health and Human Services.

Source: Laws 2011, LB600, § 5.

68-1906 Gross inpatient revenue, defined.

Gross inpatient revenue means the revenue paid to a nursing facility or skilled nursing facility for inpatient resident care, room, board, and services less contractual adjustments, bad debt, and revenue from sources other than operations, including, but not limited to, interest, guest meals, gifts, and grants.

Source: Laws 2011, LB600, § 6.

68-1907 Hospital, defined.

Hospital has the meaning found in section 71-419.

Source: Laws 2011, LB600, § 7.

68-1908 Life care contract, defined.

Life care contract means a contract between a continuing care retirement community and a resident of such community or his or her legal representative which:

(1) Includes each of the following express promises:

(a) The community agrees to provide services at any level along the continuum of care levels offered by the community;

(b) The base room fee will not increase as a resident transitions among levels of care, excluding any services or items upon which both parties initially agreed; and

(c) If the resident outlives and exhausts resources to pay for services, the community will continue to provide services at a reduced price or free of charge to the resident, excluding any payments from medicare, the medical assistance program, or a private insurance policy for which the resident is eligible and the community is certified or otherwise qualified to receive; and

(2) Requires the resident to agree to pay an entry fee to the community and to remain in the community for a minimum length of time subject to penalties against the entry fee.

Source: Laws 2011, LB600, § 8.

68-1909 Medical assistance program, defined.

Medical assistance program means the medical assistance program established pursuant to the Medical Assistance Act.

Source: Laws 2011, LB600, § 9.

Cross References

Medical Assistance Act, see section 68-901.

68-1910 Medicare day, defined.

Medicare day means any day of resident stay funded by medicare as the payment source and includes a day funded under Medicare Part A, under a Medicare Advantage or special needs plan, or under medicare hospice.

Source: Laws 2011, LB600, § 10.

68-1911 Medicare upper payment limit, defined.

Medicare upper payment limit means the limitation established by 42 C.F.R. 447.272 establishing a maximum amount of payment for services under the medical assistance program to nursing facilities, skilled nursing facilities, and hospitals.

Source: Laws 2011, LB600, § 11.

68-1912 Nursing facility, defined.

Nursing facility has the meaning found in section 71-424.

Source: Laws 2011, LB600, § 12.

68-1913 Quality assurance assessment, defined.

Quality assurance assessment means the assessment imposed under section 68-1917.

Source: Laws 2011, LB600, § 13.

68-1914 Resident day, defined.

Resident day means the calendar day in which care is provided to an individual resident of a nursing facility or skilled nursing facility that is not reimbursed under medicare, including the day of admission but not including the day of discharge, unless the dates of admission and discharge occur on the same day, in which case the resulting number of resident days is one resident day.

Source: Laws 2011, LB600, § 14.

68-1915 Skilled nursing facility, defined.

Skilled nursing facility has the meaning found in section 71-429.

Source: Laws 2011, LB600, § 15.

68-1916 Total resident days, defined.

Total resident days means the total number of residents residing in the nursing facility or skilled nursing facility between July 1 and June 30, multiplied by the number of days each such resident resided in that nursing facility or skilled nursing facility. If a resident is admitted and discharged on the same day, the resident shall be considered to be a resident for that day.

Source: Laws 2011, LB600, § 16.

68-1917 Quality assurance assessment; payment; computation.

Except for facilities which are exempt under section 68-1918 and facilities referred to in section 68-1919, each nursing facility or skilled nursing facility licensed under the Health Care Facility Licensure Act shall pay a quality assurance assessment based on total resident days, including bed-hold days, less medicare days, for the purpose of improving the quality of nursing facility or skilled nursing facility care in this state. The assessment shall be three dollars and fifty cents for each resident day for the preceding calendar quarter. The assessment in the aggregate shall not exceed the amount stated in section 68-1920.

Source: Laws 2011, LB600, § 17.

Cross References

Health Care Facility Licensure Act, see section 71-401.

68-1918 Providers exempt.

The department shall exempt the following providers from the quality assurance assessment:

- (1) State-operated veterans homes listed in section 80-315;
- (2) Nursing facilities and skilled nursing facilities with twenty-six or fewer licensed beds; and
- (3) Continuing care retirement communities.

Source: Laws 2011, LB600, § 18.

68-1919 Reduction of quality assurance assessment; when.

The department shall reduce the quality assurance assessment for either certain high-volume medicaid nursing facilities or skilled nursing facilities with high patient volumes to meet the redistribution tests in 42 C.F.R. 433.68(e)(2). Under this section, the assessment shall be based on total resident days, including bed-hold days, less medicare days, for the purpose of improving the quality of nursing facility or skilled nursing facility care in this state.

Source: Laws 2011, LB600, § 19.

68-1920 Aggregate quality assurance assessment; limitation.

The aggregate quality assurance assessment shall not exceed the lower of the amount necessary to accomplish the uses specified in section 68-1926 or the maximum amount of gross inpatient revenue that may be assessed pursuant to the indirect guarantee threshold as established pursuant to 42 C.F.R. 433.68(f)(3)(i). The aggregate quality assurance assessment shall be imposed on a per-nonmedicare-day basis.

Source: Laws 2011, LB600, § 20.

68-1921 Quality assurance assessment; payments; form.

Each nursing facility or skilled nursing facility shall pay the quality assurance assessment to the department on a quarterly basis after the medical assistance payment rates of the facility are adjusted pursuant to section 68-1926. The department shall prepare and distribute a form on which a nursing facility or skilled nursing facility shall calculate and report the quality assurance assessment. A nursing facility or skilled nursing facility shall submit the completed

form with the quality assurance assessment no later than thirty days following the end of each calendar quarter.

Source: Laws 2011, LB600, § 21.

68-1922 Department; collect quality assurance assessment; remit to State Treasurer.

The department shall collect the quality assurance assessment and remit the assessment to the State Treasurer for credit to the Nursing Facility Quality Assurance Fund. No proceeds from the quality assurance assessment, including the federal match, shall be placed in the General Fund unless otherwise provided in the Nursing Facility Quality Assurance Assessment Act.

Source: Laws 2011, LB600, § 22.

68-1923 Quality assurance assessment; report; medicaid cost report; how treated.

A nursing facility or skilled nursing facility shall report the quality assurance assessment on a separate line of the medicaid cost report of the nursing facility or skilled nursing facility. The quality assurance assessment shall be treated as a separate component in developing rates paid to nursing facilities or skilled nursing facilities and shall not be included with existing rate components. In developing a rate component for the quality assurance assessment, the assessment shall be treated as a direct pass-through to each nursing facility and skilled nursing facility, retroactive to July 1, 2011. The quality assurance assessment shall not be subject to any cost limitation or revenue offset.

Source: Laws 2011, LB600, § 23.

68-1924 Underpayment or overpayment; notice.

If the department determines that a nursing facility or skilled nursing facility has underpaid or overpaid the quality assurance assessment, the department shall notify the nursing facility or skilled nursing facility of the unpaid quality assurance assessment or refund due. Such payment or refund shall be due or refunded within thirty days after the issuance of the notice.

Source: Laws 2011, LB600, § 24.

68-1925 Failure to pay; penalty; waiver; when; withholding authorized; collection methods authorized.

(1) A nursing facility or skilled nursing facility that fails to pay the quality assurance assessment within the timeframe specified in section 68-1921 or 68-1924, whichever is applicable, shall pay, in addition to the outstanding quality assurance assessment, a penalty of one and one-half percent of the quality assurance assessment amount owed for each month or portion of a month that the assessment is overdue. If the department determines that good cause is shown for failure to pay the quality assurance assessment, the department shall waive the penalty or a portion of the penalty.

(2) If a quality assurance assessment has not been received by the department within thirty days following the quarter for which the assessment is due, the department shall withhold an amount equal to the quality assurance assessment and penalty owed from any payment due such nursing facility or skilled nursing facility under the medical assistance program.

(3) The quality assurance assessment shall constitute a debt due the state and may be collected by civil action, including, but not limited to, the filing of tax liens, and any other method provided for by law.

(4) The department shall remit any penalty collected pursuant to this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2011, LB600, § 25.

68-1926 Nursing Facility Quality Assurance Fund; created; use; investment.

(1) The Nursing Facility Quality Assurance Fund is created. Interest and income earned by the fund shall be credited to the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The department shall use the Nursing Facility Quality Assurance Fund, including the matching federal financial participation under Title XIX of the federal Social Security Act, as amended, for the purpose of enhancing rates paid under the medical assistance program to nursing facilities and skilled nursing facilities, exclusive of the reimbursement paid under the medical assistance program, and, except for the purpose of reimbursement for retroactive compensation as provided in subsection (2) of section 68-1927 or reimbursement for rate enhancements in anticipation of receipt of quality assurance assessments or related matching federal financial participation pursuant to the Nursing Facility Quality Assurance Assessment Act, shall not use the fund to replace or offset existing state funds paid to nursing facilities and skilled nursing facilities for providing services under the medical assistance program.

(3) The Nursing Facility Quality Assurance Fund shall also be used as follows:

(a) To pay the department a reasonable administrative fee for enforcing and collecting the quality assurance assessment out of the Nursing Facility Quality Assurance Fund in addition to any federal medical assistance matching funds;

(b) To pay the share under the medical assistance program of a quality assurance assessment as an add-on to the rate under the medical assistance program for costs incurred by a nursing facility or skilled nursing facility. This rate add-on shall account for the cost incurred by a nursing facility or skilled nursing facility in paying the quality assurance assessment but only with respect to the pro rata portion of the assessment that correlates with the resident days in the nursing facility or skilled nursing facility that are attributable to residents funded by the medical assistance program;

(c) To rebase rates under the medical assistance program in accordance with the medicaid state plan as defined in section 68-907. In calculating rates, the proceeds of the quality assurance assessments and federal match not utilized under subdivisions (3)(a) and (b) of this section shall be used to enhance rates by increasing the annual inflation factor to the extent allowed by such proceeds and any funds appropriated by the Legislature; and

(d) To increase quality assurance payments to fund covered services to recipients of benefits from the medical assistance program within medicare upper payment limits as determined by the department following consultation with nursing facilities and skilled nursing facilities.

Source: Laws 2011, LB600, § 26.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
 Nebraska State Funds Investment Act, see section 72-1260.

68-1927 Application for amendment to medicaid state plan; approval; effect; resubmission of waiver application.

(1) On or before September 30, 2011, or after that date if allowable by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services, the Nebraska Department of Health and Human Services shall submit an application to the Centers for Medicare and Medicaid Services amending the medicaid state plan as defined in section 68-907 by requesting a waiver of the uniformity requirement pursuant to 42 C.F.R. 433.68(e) to exempt certain facilities from the quality assurance assessment and to permit other facilities to pay the quality assurance assessment at lower rates.

(2) The quality assurance assessment is not due and payable until an amendment to the medicaid state plan which increases the rates paid to nursing facilities and skilled nursing facilities is approved by the Centers for Medicare and Medicaid Services and the nursing facilities and skilled nursing facilities have been compensated retroactively for the increased rate for services pursuant to section 68-1926.

(3) If the waiver requested under this section is not approved by the Centers for Medicare and Medicaid Services, the department may resubmit the waiver application to address any changes required by the Centers for Medicare and Medicaid Services in the rejection of such application, including the classes of facilities exempt and the rates or amounts for quality assurance assessments, if such changes do not exceed the authority and purposes of the Nursing Facility Quality Assurance Assessment Act.

Source: Laws 2011, LB600, § 27.

68-1928 Department; discontinue collection of quality assurance assessments; when; return of money.

(1) The department shall discontinue collection of the quality assurance assessments:

(a) If the waiver requested pursuant to section 68-1927 or the medicaid state plan amendment reflecting the payment rates in section 68-1926 is given final disapproval by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services;

(b) If, in any fiscal year, the state appropriates funds for nursing facility or skilled nursing facility rates at an amount that reimburses nursing facilities or skilled nursing facilities at a lesser percentage than the median percentage appropriated to other classes of providers of covered services under the medical assistance program;

(c) If money in the Nursing Facility Quality Assurance Fund is appropriated, transferred, or otherwise expended for any use other than uses permitted pursuant to the Nursing Facility Quality Assurance Assessment Act; or

(d) If federal financial participation to match the quality assurance assessments made under the act becomes unavailable under federal law. In such case, the department shall terminate the collection of the quality assurance assessments beginning on the date the federal statutory, regulatory, or interpretive change takes effect.

(2) If collection of the quality assurance assessment is discontinued as provided in this section, the money in the Nursing Facility Quality Assurance Fund shall be returned to the nursing facilities or skilled nursing facilities from which the quality assurance assessments were collected on the same basis as the assessments were assessed.

Source: Laws 2011, LB600, § 28.

68-1929 Aggrieved party; hearing; petition.

A nursing facility or skilled nursing facility aggrieved by an action of the department under the Nursing Facility Quality Assurance Assessment Act may file a petition for hearing with the director of the Division of Medicaid and Long-Term Care of the department. The hearing shall be conducted pursuant to the Administrative Procedure Act and rules and regulations of the department.

Source: Laws 2011, LB600, § 29.

Cross References

Administrative Procedure Act, see section 84-920.

68-1930 Rules and regulations.

The department may adopt and promulgate rules and regulations to carry out the Nursing Facility Quality Assurance Assessment Act.

Source: Laws 2011, LB600, § 30.

ARTICLE 20

CHILDREN'S HEALTH AND TREATMENT ACT

Section

- 68-2001. Act, how cited.
- 68-2002. Purposes of act.
- 68-2003. Terms, defined.
- 68-2004. Department; report; contents.
- 68-2005. Rules and regulations.

68-2001 Act, how cited.

Sections 68-2001 to 68-2005 shall be known and may be cited as the Children's Health and Treatment Act.

Source: Laws 2012, LB1063, § 1.

68-2002 Purposes of act.

The purposes of the Children's Health and Treatment Act are to:

(1) Require that the guidelines and criteria that the Department of Health and Human Services utilizes to determine medical necessity for services under the medical assistance program be published by the department on its web site and web sites of its contractors for managed care and administrative services. The treating guidelines and criteria shall be referenced specifically to providers when utilized as a determination of medical necessity under the medical assistance program. Treating guidelines and criteria in effect on July 19, 2012, shall be published on such web sites within thirty days after July 19, 2012. Notice of changes to treating guidelines and criteria shall be given to providers and time for public comment provided at least sixty days prior to implementation of such changes; and

(2) Require that the department collect and report on authorization and denial rates for behavioral health services for children under nineteen years of age.

Source: Laws 2012, LB1063, § 2.

68-2003 Terms, defined.

For purposes of the Children's Health and Treatment Act:

(1) Department means the Department of Health and Human Services; and

(2) Medical assistance program means the program established pursuant to section 68-903.

Source: Laws 2012, LB1063, § 3.

68-2004 Department; report; contents.

The department shall report to the Health and Human Services Committee of the Legislature on utilization controls, including, but not limited to, the rates of initial service authorizations, reauthorizations subsequent to initial service authorizations, and denials for behavioral health services for children under nineteen years of age. The first report shall be due on October 1, 2012, and shall contain such rates of initial service authorizations, reauthorizations subsequent to initial service authorizations, and denials for behavioral health services for children under nineteen years of age for the first three quarters of 2012. Thereafter, on January 1, April 1, and July 1 of each year, the department shall report electronically such rates of initial service authorizations, reauthorizations subsequent to initial service authorizations, and denials for behavioral health services for children under nineteen years of age for the previous calendar quarter.

Source: Laws 2012, LB1063, § 4; Laws 2013, LB222, § 24.

68-2005 Rules and regulations.

The department shall adopt and promulgate rules and regulations to carry out the Children's Health and Treatment Act. On and after April 1, 2013, the department shall not apply medical necessity criteria to determine medical necessity for children under nineteen years of age that have not been adopted and promulgated as rules and regulations pursuant to the Administrative Procedure Act.

Source: Laws 2012, LB1063, § 5.

Cross References

Administrative Procedure Act, see section 84-920.

PERSONAL PROPERTY

CHAPTER 69 PERSONAL PROPERTY

Article.

1. Security Interests. 69-101 to 69-115.
2. Pawnbrokers and Junk Dealers. 69-201 to 69-211.
3. Eye Care.
 - (a) Mail Order Contact Lens Act. 69-301 to 69-307.
 - (b) Consumer Protection in Eye Care Act. 69-308 to 69-314.
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5. Reduced Cigarette Ignition Propensity Act. 69-501 to 69-511.
6. Assignment of Accounts Receivable. Repealed.
7. Uniform Trust Receipts Act. Repealed.
8. Public Auctions. Repealed.
9. Sales on Sunday. Repealed.
10. Commercial Chicks and Poultry. 69-1001 to 69-1008.
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13. Disposition of Unclaimed Property.
 - (a) Uniform Disposition of Unclaimed Property Act. 69-1301 to 69-1329.
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14. Referral Sales and Leases. Repealed.
15. Retail Farm Implements. 69-1501 to 69-1504.
16. Home Solicitation Sales. 69-1601 to 69-1607.
17. Advertising Signs. 69-1701, 69-1702.
18. American Indian Arts and Crafts Sales Act. 69-1801 to 69-1808.
19. Smokeless Tobacco Products. 69-1901 to 69-1904.
20. Degradable Products. 69-2001 to 69-2012.
21. Consumer Rental Purchase Agreements. 69-2101 to 69-2119.
22. Unsolicited Goods or Merchandise. 69-2201.
23. Disposition of Personal Property Landlord and Tenant Act. 69-2301 to 69-2314.
24. Guns.
 - (a) Handguns. 69-2401 to 69-2425.
 - (b) Firearm Information. 69-2426.
 - (c) Concealed Handgun Permit Act. 69-2427 to 69-2449.
25. Plastic Container Coding. 69-2501 to 69-2507.
26. Assistive Technology Regulation Act. 69-2601 to 69-2619.
27. Tobacco. 69-2701 to 69-2711.

Cross References

Constitutional provisions:

- Aliens, Legislature may regulate property rights of, see Article I, section 25, Constitution of Nebraska.
- Arms, right to keep and bear, see Article I, section 1, Constitution of Nebraska.
- Citizens, no discrimination as to property rights of, see Article I, section 25, Constitution of Nebraska.
- Deprivation, due process required, see Article I, section 3, Constitution of Nebraska.
- Railroads, rolling stock and other movable property liable to execution and sale, see Article X, section 2, Constitution of Nebraska.
- Search and seizure, conditions, see Article I, section 7, Constitution of Nebraska.
- Taking for public use, compensation required, see Article I, section 21, Constitution of Nebraska.
- Taxation, see Article VIII, section 1 et seq., Constitution of Nebraska.

Animals, seizure of property used in offenses involving, see section 28-1006.

Auction sales, regulatory power of municipalities:

- Cities of the first class, see section 16-237.
- Cities of the metropolitan class, see section 14-102.
- Cities of the primary class, see section 15-217.

Controlled substances and related property, seizure without warrant, disposition, see sections 28-428, 28-431, 28-1439.02, and 28-1601 to 28-1603.

Crimes involving property, justification, see section 28-1415.

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District court actions and procedure relating to:

PERSONAL PROPERTY

- Attachment, see sections 25-1001 to 25-1055.
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Exemptions from execution, see sections 25-1552 to 25-1563.02.
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Joinder of claims, see section 25-701.
Limitation of actions, see section 25-207.
Replevin, see sections 25-1093 to 25-10,110.
Survival of actions, see section 25-1401.
- Documents of title**, see article 7, Uniform Commercial Code.
Dogs are personal property, see section 54-601.
Eminent domain, see sections 76-701 to 76-726.
Frauds, statute of, see Chapter 36, articles 2 and 4.
Intangible property, defined, see section 77-105.
Livestock brands treated as personal property, see section 54-1,100.
Married woman, capacity to convey, see section 42-202.
Money, defined, see section 77-106.
Motor Vehicle Certificate of Title Act, see section 60-101.
Negotiable instruments, see article 3, Uniform Commercial Code.
Nuisance, seizure of property used in conducting, see section 28-825.
Partnerships, partner's interest in personal property, see sections 67-271 and 67-427 to 67-430.
Sales and purchases, unlawful discrimination, see Chapter 59, article 5.
Search and seizure, general provisions, see Chapter 29, article 8.
Tangible property:
Defined, see section 77-105.
Taxation of, see Chapter 77, article 12.
- Taxes**:
General provisions, see Chapter 77, article 12.
Money, defined, see section 77-106.
Personal property, defined, see section 77-104.
Property taxable, exemptions, see section 77-202.
Tangible and intangible property, defined, see section 77-105.
When due and delinquent, see sections 77-377.01 to 77-377.04.
- Uniform Property Act**, see section 76-123.
Uniform Statutory Rule Against Perpetuities Act, see section 76-2001.
Wage assignments by heads of families, see sections 36-213 and 36-213.01.
Warehouse receipts and other documents of title, see article 7, Uniform Commercial Code.
Wife's separate property, ownership not affected by marriage, see section 42-201.

ARTICLE 1 SECURITY INTERESTS

Cross References

- Installment loan licensees may not take security interests signed in blank**, see section 45-1028.
Liens, generally, see Chapter 52.
Motor vehicles, requirements for security interests, see sections 60-164 to 60-169.
Sales and leases, see articles 2 and 2A, respectively, Uniform Commercial Code.
Secured transactions, see article 9, Uniform Commercial Code.

Section

- 69-101. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-102. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-103. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-104. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-105. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-106. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-107. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-108. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-109. Security interest; personal property; sale or transfer without consent; penalty.
69-109.01. Security interest; personal property; sale by auctioneer; no liability under conditions specified.
69-110. Security interest; personal property; removal from county; penalty.
69-111. Security interest; personal property; failure to account or produce for inspection; penalty.
69-112. Repealed. Laws 1967, c. 416, § 1.
69-113. Repealed. Laws 1967, c. 416, § 1.
69-114. Repealed. Laws 1967, c. 416, § 1.
69-115. Repealed. Laws 1967, c. 416, § 1.

69-101 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-102 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-103 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-104 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-105 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-106 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-107 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-108 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-109 Security interest; personal property; sale or transfer without consent; penalty.

Any person who, after having created any security interest in any article of personal property, either presently owned or after-acquired, for the benefit of another, shall, during the existence of the security interest, sell, transfer, or in any manner dispose of the said personal property, or any part thereof so given as security, to any person or body corporate, without first procuring the consent, in writing, of the owner and holder of the security interest, to any such sale, transfer or disposal, shall be deemed guilty of a Class IV felony.

Source: Laws 1867, § 9, p. 11; Laws 1877, § 1, p. 5; Laws 1889, c. 35, § 1, p. 386; R.S.1913, § 534; C.S.1922, § 425; C.S.1929, § 69-109; R.S.1943, § 69-109; Laws 1969, c. 543, § 1, p. 2194; Laws 1971, LB 961, § 1; Laws 1977, LB 39, § 128.

1. Constitutionality
2. Sale with consent of mortgagee
3. Sale without consent of mortgagee
4. Criminal responsibility

1. Constitutionality

Section is not in conflict with Article I, section 9, Constitution of Nebraska. *State v. Heldenbrand*, 62 Neb. 136, 87 N.W. 25 (1901).

2. Sale with consent of mortgagee

In a prosecution for the unlawful sale of mortgaged property without the written consent of the mortgagee, oral consent of the mortgagee to the sale, coupled with payment of the value of the property, is a defense. *Mullins v. State*, 146 Neb. 521, 20 N.W.2d 385 (1945).

Sale by mortgagor under agreement with mortgagee for application of proceeds on mortgage debt is equitable assignment of proceeds. *Lathrop v. Schlauger*, 113 Neb. 14, 201 N.W. 654 (1924).

Where sale is made with consent of mortgagee, mortgagor is agent of mortgagee. *State ex rel. Davis v. Brown County Bank of Long Pine*, 112 Neb. 642, 200 N.W. 866 (1924); *Farmers State Bank of Petersburg v. Anderson*, 112 Neb. 413, 199 N.W. 728 (1924); *Farmers State Bank of Stella v. Home State Bank of Humboldt*, 106 Neb. 711, 184 N.W. 170 (1921).

Mortgagee waives his lien where sale is made with his consent by mortgagor. *Warrick v. Rasmussen*, 112 Neb. 299, 199 N.W. 544 (1924); *Seymour v. Standard Live Stock Comm. Co.*, 110 Neb. 185, 192 N.W. 398 (1923); *Gosnell v. Webster*, 70 Neb. 705, 97 N.W. 1060 (1904); *Drexel v. Murphy*, 59 Neb. 210, 80 N.W. 813 (1899).

Mortgagor may contract for future sale and disposition of property. *Morris v. Persing*, 76 Neb. 80, 107 N.W. 218 (1906).

3. Sale without consent of mortgagee

Mortgagee may recover payment of one who sells property subject to mortgage without notice. *Caproon v. Mitchell*, 77 Neb. 562, 110 N.W. 378 (1906).

Mortgagee, without knowledge of unauthorized sale, does not ratify by accepting proceeds. *Gosnell v. Webster*, 70 Neb. 705, 97 N.W. 1060 (1904).

A mortgagee of chattels will be held to have ratified an unauthorized sale of the property by knowingly receiving and retaining the proceeds of sale. *Ayers v. McConahey*, 65 Neb. 588, 91 N.W. 494 (1902).

Mortgagee may either disavow the sale and retake property or ratify it and recover proceeds of sale. *Burke v. First Nat. Bank of Pender*, 61 Neb. 20, 84 N.W. 408 (1900).

4. Criminal responsibility

Although section does not expressly require fraud, judicial construction of the section has established that proof of fraud is required for a conviction thereunder. It is presumed that when a statute has been construed by the Supreme Court, and the same is substantially reenacted, the Legislature gave to the language the significance previously accorded it by the Supreme Court. *State v. Hocutt*, 207 Neb. 689, 300 N.W.2d 198 (1981).

Conviction of disposing of mortgaged personal property sustained. *Pulliam v. State*, 169 Neb. 661, 100 N.W.2d 704 (1960).

Law was enacted to prevent fraudulent transfer of mortgaged chattel property. *Pulliam v. State*, 167 Neb. 614, 94 N.W.2d 51 (1959).

Information is not fatally defective because it fails to allege name of person or body corporate to whom sale or transfer was made. *Hunt v. State*, 143 Neb. 871, 11 N.W.2d 533 (1943).

In prosecution hereunder accused may show as defense (1) that full value of mortgaged chattel has been turned over to mortgagee or (2) that the mortgage debt has been paid. *Fiehn v. State*, 124 Neb. 16, 245 N.W. 6 (1932).

Wrongdoer cannot be convicted in Nebraska on sole charge of selling mortgaged property when actual sale occurred in Iowa. *Forney v. State*, 123 Neb. 179, 242 N.W. 441 (1932).

Mortgage upon unplanted crop is invalid as basis of conviction of tenant in case he sells crops not planted at time the mortgage in lease was executed. *Nelson v. State*, 121 Neb. 658, 238 N.W. 110 (1931).

Lien on properly identified crop extends to harvested crop unless otherwise provided, and it is a crime to sell same. *Eigbrett v. State*, 111 Neb. 388, 196 N.W. 700 (1923).

Statute contains all the elements of the crime for which it is sought to provide punishment, and criminal intent is not an essential ingredient of the offense. *State v. Butcher*, 104 Neb. 380, 177 N.W. 184 (1920).

Section applies to sale to partnerships. *State v. Stapel*, 103 Neb. 135, 170 N.W. 665 (1919).

Sale of mortgaged property without mortgagee's consent is punishable. *Wilson v. State*, 43 Neb. 745, 62 N.W. 209 (1895).

To constitute offense, the sale of the property must have been made by the mortgagor during the existence of the mortgage lien without the written consent of the owner and holder of the debt secured by the mortgage. *State v. Hughes*, 38 Neb. 366, 56 N.W. 982 (1893).

Information need not allege intent. *State v. Hurds*, 19 Neb. 316, 27 N.W. 139 (1886).

69-109.01 Security interest; personal property; sale by auctioneer; no liability under conditions specified.

The auctioneer, who in good faith and without notice of a security interest therein, sells personal property at auction, which is in fact subject to a security interest, for a principal whose identity has been disclosed, in which property the auctioneer has no interest but acts only as an intermediary of the owner is not liable to the holder of the security interest for any damage sustained as a result of such sale.

Source: Laws 1963, c. 391, § 1, p. 1242; Laws 1969, c. 543, § 2, p. 2194; Laws 1971, LB 961, § 2.

Section held constitutional, but auctioneer to be relieved of liability must meet all conditions, including actual disclosure of principal's identity. *State Securities Co. v. Norfolk Livestock Sales Co., Inc.*, 187 Neb. 446, 191 N.W.2d 614 (1971).

Where auctioneer, in good faith, without notice of security interests of Farmers Home Administration, and for principals whose identities had not been disclosed, sold cattle, he was not liable to government in conversion. *United States v. Chappel Livestock Auction, Inc.*, 523 F.2d 840 (8th Cir. 1975).

Where security agreement between bank and debtor granted security interest in livestock for farming operations rather than

for personal, family, or household purposes or for business purposes, a security interest in livestock used in farming operations, as opposed to inventory, was created. *First State Bank v. Maxfield*, 485 F.2d 71 (10th Cir. 1973).

Title to the one hundred forty-five head of cattle passed to H & O Farms at the time the plaintiff delivered them and, therefore, any interest the plaintiff retained was no more than a security interest provided there was no agreement between the parties, either expressly or in course of conduct, that altered the result. *Myers v. Columbus Sales Pavilion, Inc.*, 575 F.Supp. 805 (D. Neb. 1983).

69-110 Security interest; personal property; removal from county; penalty.

Any person who, after having created any security interest in any article of personal property, whether presently owned or after-acquired, for the benefit of another, shall, during the existence of such interest, remove, permit, or cause to be removed such property or any part thereof out of the county within which such property was situated, with intent to deprive the owner or owners of the security interest of his or her or their security, shall be deemed guilty of a felony and upon conviction thereof shall be imprisoned in a Department of Correctional Services adult correctional facility for a term not exceeding ten years and be fined in a sum not exceeding one thousand dollars.

Source: Laws 1885, c. 11, § 1, p. 108; R.S.1913, § 535; C.S.1922, § 426; C.S.1929, § 69-110; R.S.1943, § 69-110; Laws 1969, c. 543, § 3, p. 2195; Laws 1971, LB 961, § 3; Laws 1993, LB 31, § 20.

Conviction for removing mortgaged personal property out of county sustained. *Pulliam v. State*, 169 Neb. 661, 100 N.W.2d 704 (1960).

Criminal intent is an essential element of offense. *Pulliam v. State*, 167 Neb. 614, 94 N.W.2d 51 (1959).

Where property mortgaged in Nebraska was removed by truck and sold in Iowa, conviction under this section was proper. *Forney v. State*, 123 Neb. 179, 242 N.W. 441 (1932).

A mortgagor who removes only a portion of the mortgaged property is as amenable under statute as if he had removed all of it. *Wilson v. State*, 43 Neb. 745, 62 N.W. 209 (1895).

69-111 Security interest; personal property; failure to account or produce for inspection; penalty.

Any person who, after having created any security interest in any article of personal property, whether presently owned or after-acquired, for the benefit of another, shall, during the existence of the lien or title of such security interest, fail to give, from time to time upon the demand of the holder of the security interest, an accounting for such property, or who, when the holder of the security interest has reason to believe his security insufficient or when the creator of the security interest requests an extension of the time of payment, shall fail, on demand of the holder of the security interest or his agent, to identify and exhibit for inspection the property covered by the security interest at reasonable hours; or who, in case of loss or death of such articles covered by the security interest, shall fail to produce within ten days after knowledge of the loss or death, notice in writing to the holder of the security interest of such death or loss, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than five dollars nor more than one hundred dollars, or imprisoned in the county jail not exceeding thirty days.

Source: Laws 1917, c. 204, § 1, p. 482; C.S.1922, § 427; Laws 1927, c. 37, § 1, p. 166; C.S.1929, § 69-111; Laws 1941, c. 136, § 1, p. 541; C.S.Supp.,1941, § 69-111; R.S.1943, § 69-111; Laws 1969, c. 543, § 4, p. 2195; Laws 1971, LB 961, § 4.

69-112 Repealed. Laws 1967, c. 416, § 1.

69-113 Repealed. Laws 1967, c. 416, § 1.

69-114 Repealed. Laws 1967, c. 416, § 1.

69-115 Repealed. Laws 1967, c. 416, § 1.

ARTICLE 2**PAWNBROKERS AND JUNK DEALERS****Cross References**

Buyer in ordinary course of business, pawnbroker not included, see section 1-201, Uniform Commercial Code.

County zoning, junk and salvage yards, see section 23-174.10.

Municipalities, regulatory powers of:

Cities of the first class, see section 16-205.

Cities of the metropolitan class, see section 14-109.

Cities of the primary class, see section 15-203.

Cities of the second class and villages, see sections 17-134 and 17-525.

Nebraska State Patrol, required to keep record of personal property pawned, see section 29-210.

Section

69-201. Pawnbroker, defined.

69-202. Permit required; fees; application, contents; issuance; bond.

69-203. Permit; business location; prohibited activities.

69-204. Records required; inspection; stolen property; procedures.

69-205. Reports to police; when required.

69-206. Pawned or secondhand goods; restrictions on disposition; jewelry defined.

69-207. Repealed. Laws 1981, LB 44, § 10.

69-208. Violation; penalty; permit; suspension or revocation; procedure.

69-209. Pawnbroker; limitation on sale of goods.

69-210. Pawnbrokers; customer fingerprint required; restrictions on property accepted.

69-211. Repealed. Laws 1981, LB 44, § 10.

69-201 Pawnbroker, defined.

Any person engaged in the business of lending money upon chattel property for security and requiring possession of the property so mortgaged on condition of returning the same upon payment of a stipulated amount of money, or purchasing property on condition of selling it back at a stipulated price, is declared to be a pawnbroker for the purpose of sections 69-201 to 69-210.

Source: Laws 1899, c. 10, § 1, p. 64; R.S.1913, § 536; C.S.1922, § 428; C.S.1929, § 69-201; R.S.1943, § 69-201; Laws 1981, LB 44, § 1.

69-202 Permit required; fees; application, contents; issuance; bond.

Every person engaged in the business of pawnbroking shall pay to the city or village treasurer for a permit to carry on business the sum of one hundred dollars per year or fifty dollars for every six months, in metropolitan cities, but in all other cities or villages the sum of fifty dollars per year or the sum of twenty-five dollars for every six months. Such permit shall be obtained by filing an application with, and having such application approved by, the governing body of the city or village or an officer or agency designated by such governing body for such purpose.

The application shall contain the following information:

- (1) The name and address of the owner and the manager of the business and, if the applicant is an individual, the applicant's social security number;
- (2) If the applicant is a corporation, a copy of the articles of incorporation and the names of its officers and shareholders;
- (3) The exact location where the business is to be conducted; and
- (4) The exact location where any goods, wares, and merchandise may be stored or kept if other than the business location.

When reviewing applications for a permit required by this section, the governing body or delegated officer or agency shall take into consideration the criminal record, if any, of the applicant and, if the applicant is a corporation, of its officers and shareholders. No permit shall be issued to any applicant who has been convicted of a felony and, if the applicant is a corporation, no permit shall be issued when any officer or shareholder has been convicted of a felony.

Such person shall also give bond to the city or village in which he, she, or it is to do business, in the sum of five thousand dollars with surety to be approved by the mayor or its chief executive officer, conditioned for the faithful performance by the principal, of each and all of the trusts imposed by law or by usage attached to pawnbrokers.

No permit fee shall be exacted under this section in municipalities which impose a permit fee for the pawnbroking business by ordinance.

Source: Laws 1899, c. 10, § 2, p. 64; R.S.1913, § 537; C.S.1922, § 429; C.S.1929, § 69-202; R.S.1943, § 69-202; Laws 1981, LB 44, § 2; Laws 1997, LB 752, § 154.

69-203 Permit; business location; prohibited activities.

No person shall be allowed to do business in more than one location under one permit. Each permit shall state the place where such business is to be carried on, and shall not be assigned. Goods, wares, and merchandise shall be kept or stored only at those locations specifically listed in the permit application.

It shall be unlawful for any person not having a permit as required in section 69-202 to display any sign or advertisement stating that money is lent on goods or that goods are purchased as described in section 69-201.

Source: Laws 1899, c. 10, § 3, p. 65; R.S.1913, § 538; C.S.1922, § 430; C.S.1929, § 69-203; R.S.1943, § 69-203; Laws 1981, LB 44, § 3.

69-204 Records required; inspection; stolen property; procedures.

All persons who shall be engaged in the business of pawnbrokers, dealers in secondhand goods, or junk dealers, shall keep a ledger and complete a card, to be furnished by the city or village, on which shall be legibly written in ink, at the time of any loan or purchase, the following information:

- (1) The date of the loan or purchase;
- (2) The name of the person from whom the property is purchased or received, his or her signature, date of birth, and driver's license number or other means of identification;
- (3) A full and accurate description of the property purchased or received, including any manufacturer's identifying insignia or serial number;
- (4) The time when any loan becomes due;
- (5) The amount of purchase money, or the amount lent and any loan charges, for each item; and
- (6) The identification and signature of the clerk or agent for the business who handled the transaction.

Entries shall not in any manner be erased, obliterated, or defaced. The person receiving a loan or selling property shall receive at no charge a plain written or printed ticket for the loan, or a plain written or printed receipt for the articles sold, containing a copy of the entries required by this section.

Every pawnbroker, or employee of a pawnbroker, shall admit to the pawnbroker's premises at any reasonable time during normal business hours any law enforcement officer for the purpose of examining any property and records on the premises, and shall allow such officer to place restrictions on the disposition of any property for which a reasonable belief exists that it has been stolen. Any person claiming an ownership interest in property received by a pawnbroker for which a reasonable belief exists that such property has been stolen may recover such property as provided by sections 25-1093 to 25-10,110.

Source: Laws 1899, c. 10, § 4, p. 65; R.S.1913, § 539; C.S.1922, § 431; C.S.1929, § 69-204; R.S.1943, § 69-204; Laws 1981, LB 44, § 4.

69-205 Reports to police; when required.

It shall be the duty of every such pawnbroker, dealer in secondhand goods, or junk dealer, every day except Sunday before the hour of 12 noon, to deliver to the police department of the municipality where said business is located, or if the municipality does not have a police department, to the sheriff's office, a legible and correct copy of each card or ledger entry required by section 69-204 for the transactions of the previous day. Transactions occurring on Saturday shall be reported on the following Monday. No card shall be required for goods purchased from manufacturers or wholesale dealers having an established place of business, or goods purchased at open sale from any bankrupt stock or from any other person doing business and having an established place of

business in the city or village, but such goods must be accompanied by a bill of sale or other evidence of open and legitimate purchase, and must be shown to the mayor or any law enforcement officer when demanded. Dealers in scrap metals, except gold and silver, shall not be included in the provisions of this section.

Source: Laws 1899, c. 10, § 5, p. 65; R.S.1913, § 540; C.S.1922, § 432; C.S.1929, § 69-205; R.S.1943, § 69-205; Laws 1981, LB 44, § 5.

69-206 Pawned or secondhand goods; restrictions on disposition; jewelry defined.

No personal property received or purchased by any pawnbroker, dealer in secondhand goods, or junk dealer, shall be sold or permitted to be taken from the place of business of such person for fourteen days after the copy of the card or ledger entry required to be delivered to the police department or sheriff's office shall have been delivered as required by section 69-205. Secondhand jewelry shall not be destroyed, damaged, or in any manner defaced for a period of fourteen days after the time of its purchase or receipt. For purposes of this section, jewelry shall mean any ornament which is intended to be worn on or about the body and which is made in whole or in part of any precious metal, including gold, silver, platinum, copper, brass, or pewter.

All property accepted as collateral security or purchased by a pawnbroker shall be kept segregated from all other property in a separate area for a period of forty-eight hours after its receipt or purchase, except that valuable articles may be kept in a safe with other property if grouped according to the day of purchase or receipt. Notwithstanding the provisions of this section, a pawnbroker may return any property to the person pawning the same after the expiration of such forty-eight-hour period or when permitted by the chief of police, sheriff, or other authorized law enforcement officer.

Source: Laws 1899, c. 10, § 6, p. 66; R.S.1913, § 541; C.S.1922, § 433; C.S.1929, § 69-206; R.S.1943, § 69-206; Laws 1981, LB 44, § 6; Laws 2012, LB941, § 1.

69-207 Repealed. Laws 1981, LB 44, § 10.

69-208 Violation; penalty; permit; suspension or revocation; procedure.

Every broker, agent, or dealer mentioned in sections 69-201 to 69-210 who shall violate any of the provisions thereof, shall be guilty of a Class V misdemeanor.

In addition, any permit issued pursuant to section 69-202 may be revoked or suspended if the holder of such permit violates any provision of state law classified as a misdemeanor or felony. Before any permit may be revoked or suspended the holder shall be given notice of the date and time for a hearing before the governing body or delegated officer or agency which issued the permit to show cause why the permit should not be revoked or suspended. Such hearing shall be held within seven days of the date of the notice.

Source: Laws 1899, c. 10, § 8, p. 66; R.S.1913, § 543; C.S.1922, § 435; C.S.1929, § 69-208; R.S.1943, § 69-208; Laws 1981, LB 44, § 7.

69-209 Pawnbroker; limitation on sale of goods.

It shall be unlawful for any pawnbroker to sell any goods purchased or received as described in section 69-201, during the period of four months from the date of purchasing or receiving such goods.

Source: Laws 1899, c. 10, § 9, p. 66; R.S.1913, § 544; C.S.1922, § 436; C.S.1929, § 69-209; R.S.1943, § 69-209; Laws 1959, c. 314, § 1, p. 1155; Laws 1961, c. 333, § 1, p. 1042; Laws 1961, c. 334, § 1, p. 1043; Laws 1981, LB 44, § 8.

69-210 Pawnbrokers; customer fingerprint required; restrictions on property accepted.

(1) All persons who shall be engaged in the business of pawnbroker shall, in addition to the requirements of section 69-204, obtain and keep a single legible fingerprint of each person pawning, pledging, mortgaging, or selling any goods or articles. The fingerprint shall be taken from the right index finger or, if the right index finger is missing, from the left index finger. Each pawnbroker shall display a notice to customers, in a prominent location, stating that such pawnbroker is required by state law to fingerprint every person pawning or selling an item.

(2) No pawnbroker shall accept as collateral security or purchase any property:

(a) From any person who is under eighteen years of age, or who appears to be under the influence of alcohol, narcotic drug, stimulant, or depressant, or who appears to be mentally incompetent; or

(b) On which the serial numbers or other identifying insignia have been destroyed, removed, altered, covered, or defaced.

Source: Laws 1976, LB 431, § 1; Laws 1981, LB 44, § 9.

69-211 Repealed. Laws 1981, LB 44, § 10.

ARTICLE 3

EYE CARE

(a) MAIL ORDER CONTACT LENS ACT

Section

- 69-301. Act, how cited.
- 69-302. Terms, defined.
- 69-303. Ophthalmic provider; contact lens prescription.
- 69-304. Ophthalmic provider; registration; requirements.
- 69-305. Fees; disposition.
- 69-306. Act; enforcement.
- 69-307. Rules and regulations.

(b) CONSUMER PROTECTION IN EYE CARE ACT

- 69-308. Act, how cited.
- 69-309. Terms, defined.
- 69-310. Contact lenses or spectacles; prescription; contents; release to patient.
- 69-311. Operation of kiosk; conditions.
- 69-312. Over-the-counter spectacles.
- 69-313. Uniform Credentialing Act; applicability; department; powers; civil penalty; Attorney General; powers.
- 69-314. Rules and regulations.

(a) MAIL ORDER CONTACT LENS ACT

69-301 Act, how cited.

Sections 69-301 to 69-307 shall be known and may be cited as the Mail Order Contact Lens Act.

Source: Laws 2001, LB 398, § 86.

69-302 Terms, defined.

For purposes of the Mail Order Contact Lens Act:

- (1) Contact lens prescription means a written order bearing the original signature of an optometrist or physician or an oral or electromagnetic order issued by an optometrist or physician that authorizes the dispensing of contact lenses to a patient and meets the requirements of section 69-303;
- (2) Department means the Department of Health and Human Services;
- (3) Mail-order ophthalmic provider means an entity that ships, mails, or in any manner delivers dispensed contact lenses to Nebraska residents;
- (4) Optometrist means a person licensed to practice optometry pursuant to the Optometry Practice Act; and
- (5) Physician means a person licensed to practice medicine and surgery pursuant to the Medicine and Surgery Practice Act.

Source: Laws 2001, LB 398, § 87; Laws 2007, LB296, § 294; Laws 2007, LB463, § 1176.

Cross References

Medicine and Surgery Practice Act, see section 38-2001.

Optometry Practice Act, see section 38-2601.

69-303 Ophthalmic provider; contact lens prescription.

(1) A mail-order ophthalmic provider may dispense contact lenses in Nebraska or to a Nebraska resident if the contact lens prescription is valid. Such prescription is valid if it (a) contains the patient's name, date ordered, expiration date, instructions for use, optometrist or physician identifying information, date of patient's last examination, fabrication, and related information and (b) has not expired.

(2) Each contact lens prescription shall be valid for the duration of the prescription as indicated by the optometrist or physician or for a period of twelve months from the date of issuance, whichever period expires first. Upon expiration, an optometrist or physician may extend the prescription without further examination.

(3) An optometrist or physician shall offer the prescription to a patient following the fitting process and payment of all fees for services rendered. The patient shall mail the prescription or send a copy by facsimile or other electronic means to the mail-order ophthalmic provider.

Source: Laws 2001, LB 398, § 88.

69-304 Ophthalmic provider; registration; requirements.

The department shall require and provide for an annual registration for all mail-order ophthalmic providers located outside of this state, including those providing services via the Internet, that dispense contact lenses to Nebraska

residents. The department shall grant a mail-order ophthalmic provider's registration upon the disclosure and certification by such provider of the following:

(1) That it is licensed or registered to dispense contact lenses in the state where the dispensing facility is located and from where the contact lenses are dispensed, if required;

(2) The location, names, and titles of all principal corporate officers and the person who is responsible for overseeing the dispensing of contact lenses to Nebraska residents;

(3) That it complies with directions and appropriate requests for information from the regulating agency of each state where it is licensed or registered;

(4) That it will respond directly and within a reasonable period of time to all communications from the department concerning emergency circumstances arising from the dispensing of contact lenses to Nebraska residents;

(5) That it maintains its records of contact lenses dispensed to Nebraska residents so that such records are readily retrievable;

(6) That it will cooperate with the department in providing information to the regulatory agency of any state where it is licensed or registered concerning matters related to the dispensing of contact lenses to Nebraska residents;

(7) That it conducts business in a manner that conforms to the requirements of section 69-303;

(8) That it provides a toll-free telephone service for responding to patient questions and complaints during its regular hours of operation and agrees to (a) include the toll-free number in literature provided with mailed contact lenses and (b) refer all questions relating to eye care for the lenses prescribed back to the contact lens prescriber; and

(9) That it provides the following, or substantially equivalent, written notification to the patient whenever contact lenses are supplied:

WARNING: IF YOU ARE HAVING ANY OF THE FOLLOWING SYMPTOMS, REMOVE YOUR LENSES IMMEDIATELY AND CONSULT YOUR EYE CARE PRACTITIONER BEFORE WEARING YOUR LENSES AGAIN: UNEXPLAINED EYE DISCOMFORT, WATERING, VISION CHANGE, OR REDNESS.

Source: Laws 2001, LB 398, § 89.

69-305 Fees; disposition.

The mail-order ophthalmic provider shall pay a fee equivalent to the annual fee for an initial or renewal permit to operate a pharmacy in Nebraska as established in and at the times provided for in the Health Care Facility Licensure Act. Such fees shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund.

Source: Laws 2001, LB 398, § 90; Laws 2003, LB 242, § 12; Laws 2007, LB296, § 295.

Cross References

Health Care Facility Licensure Act, see section 71-401.

69-306 Act; enforcement.

The department, upon the recommendation of the Board of Pharmacy, the Board of Optometry, or the Board of Medicine and Surgery, shall notify the Attorney General of any possible violations of the Mail Order Contact Lens Act. If the Attorney General has reason to believe that an out-of-state person is operating in violation of the act, the Attorney General may commence an action in the district court of Lancaster County to enjoin such person from further mailing, shipping, or otherwise delivering contact lenses into Nebraska.

Source: Laws 2001, LB 398, § 91.

69-307 Rules and regulations.

The department, upon the joint recommendation of the Board of Pharmacy, Board of Optometry, and Board of Medicine and Surgery, may adopt and promulgate rules and regulations for enforcement of the Mail Order Contact Lens Act.

Source: Laws 2001, LB 398, § 92.

(b) CONSUMER PROTECTION IN EYE CARE ACT

69-308 Act, how cited.

Sections 69-308 to 69-314 shall be known and may be cited as the Consumer Protection in Eye Care Act.

Source: Laws 2016, LB235, § 1.

69-309 Terms, defined.

For purposes of the Consumer Protection in Eye Care Act:

(1) Contact lens means any lens placed directly on the surface of the eye, regardless of whether or not it is intended to correct a visual defect. Contact lens includes, but is not limited to, any cosmetic, therapeutic, or corrective lens;

(2) Department means the Department of Health and Human Services;

(3) Dispense means the act of furnishing spectacles or contact lenses to a patient;

(4) Eye examination means an assessment of the ocular health and visual status of a patient that does not consist solely of objective refractive data or information generated by an automated testing device, including an autorefractor, in order to establish a medical diagnosis or for the establishment of a refractive error;

(5) Kiosk means automated equipment or application designed to be used on a telephone, a computer, or an Internet-based device that can be used either in person or remotely to conduct an eye examination;

(6) Over-the-counter spectacles means eyeglasses or lenses in a frame for the correction of vision that may be sold by any person, firm, or corporation at retail without a prescription;

(7) Prescription means a provider's handwritten or electronic order based on an eye examination that corrects refractive error;

(8) Provider means a physician, an osteopathic physician, or a physician assistant licensed under the Medicine and Surgery Practice Act or an optometrist licensed under the Optometry Practice Act; and

(9) Spectacles means an optical instrument or device worn or used by an individual that has one or more lenses designed to correct or enhance vision addressing the visual needs of the individual wearer, commonly known as glasses or eyeglasses, including spectacles that may be adjusted by the wearer to achieve different types or levels of visual correction or enhancement. Spectacles does not include an optical instrument or device that is not intended to correct or enhance vision or sold without consideration of the visual status of the individual who will use the optical instrument or device.

Source: Laws 2016, LB235, § 2.

Cross References

Medicine and Surgery Practice Act, see section 38-2001.

Optometry Practice Act, see section 38-2601.

69-310 Contact lenses or spectacles; prescription; contents; release to patient.

No person in this state may dispense contact lenses or spectacles, other than over-the-counter spectacles, to a patient without a valid prescription from a provider. A valid prescription for spectacles or contact lenses (1) shall contain an expiration date of not less than two years for spectacles or one year for contact lenses from the date of the eye examination by the provider or a statement by the provider of the reasons why a shorter time is appropriate based on the medical needs of the patient and (2) may not be made based solely on information about the human eye generated by a kiosk. The prescription shall take into consideration any medical findings and any refractive error discovered during the eye examination. A provider may not refuse to release a prescription for spectacles or contact lenses to a patient.

Source: Laws 2016, LB235, § 3.

69-311 Operation of kiosk; conditions.

No person shall operate a kiosk in Nebraska unless:

(1) The kiosk is registered or approved by the federal Food and Drug Administration for the intended use;

(2) The kiosk is designed and operated in a manner that provides any accommodation required by the federal Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq., as such act existed on January 1, 2015;

(3) The kiosk and accompanying technology used for the collection and transmission of information and data, including photographs and scans, gathers and transmits protected health information in compliance with the federal Health Insurance Portability and Accountability Act of 1996, as such act existed on January 1, 2015;

(4) The procedure for which the kiosk is used has a recognized Current Procedural Terminology code maintained by the American Medical Association;

(5)(a) If the kiosk has a physical location, the name and state license number of the provider who will read and interpret the diagnostic information and data shall be prominently displayed on the kiosk; or

(b) If the kiosk is an application, the name and state license number of the provider who will read and interpret the diagnostic information and data shall be displayed on the patient's prescription;

(6) Diagnostic information and data, including photographs and scans, gathered by the kiosk is read and interpreted by a provider if clinically appropriate; and

(7) The owner or lessee of the kiosk maintains liability insurance in an amount adequate to cover claims made by individuals diagnosed or treated based on information and data, including photographs and scans, generated by the kiosk.

Source: Laws 2016, LB235, § 4.

69-312 Over-the-counter spectacles.

The lenses in over-the-counter spectacles shall be of uniform focus power in each eye and shall not exceed +3.25 diopters.

Source: Laws 2016, LB235, § 5.

69-313 Uniform Credentialing Act; applicability; department; powers; civil penalty; Attorney General; powers.

(1) The Uniform Credentialing Act shall apply to any person alleged or believed to have violated the Consumer Protection in Eye Care Act. The department shall investigate potential violations of the Consumer Protection in Eye Care Act according to the procedures of the Uniform Credentialing Act and shall take appropriate action as provided by the Uniform Credentialing Act.

(2) In addition to the remedies, penalties, or relief available under the Uniform Credentialing Act, the department may impose a civil penalty against a person who does not hold a credential under the Uniform Credentialing Act who has violated or attempted to violate the Consumer Protection in Eye Care Act. The civil penalty shall not exceed ten thousand dollars for each violation, up to the maximum provided in section 38-198. If the department finds that a violation or attempted violation occurred and did not result in significant harm to human health, the department may issue a warning instead of imposing a civil penalty. Any civil penalty imposed pursuant to this section may be collected as provided in section 38-198.

(3) At the request of the department, the Attorney General may file a civil action seeking an injunction or other appropriate relief to enforce the Consumer Protection in Eye Care Act and the rules and regulations adopted and promulgated under the Consumer Protection in Eye Care Act.

Source: Laws 2016, LB235, § 6.

Cross References

Uniform Credentialing Act, see section 38-101.

69-314 Rules and regulations.

The department, in consultation with the Board of Optometry and the Board of Medicine and Surgery, may adopt and promulgate rules and regulations to carry out the Consumer Protection in Eye Care Act.

Source: Laws 2016, LB235, § 7.

SCRAP METAL RECYCLING
ARTICLE 4
SCRAP METAL RECYCLING

Section	
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69-427.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-428.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-429.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-430.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-431.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-432.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-433.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-434.	Repealed. Laws 1963, c. 544, art. 10, § 1.
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69-436.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-437.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-438.	Repealed. Laws 1963, c. 544, art. 10, § 1.
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69-441.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-442.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-443.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-444.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-445.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-446.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-447.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-448.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-449.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-450.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-451.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-452.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-453.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-454.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-455.	Repealed. Laws 1963, c. 544, art. 10, § 1.

Section	
69-456.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-457.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-458.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-459.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-460.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-461.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-462.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-463.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-464.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-465.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-466.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-467.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-468.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-469.	Repealed. Laws 1963, c. 544, art. 10, § 1.
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69-474.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-475.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-476.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-477.	Repealed. Laws 1963, c. 544, art. 10, § 1.
69-478.	Repealed. Laws 1963, c. 544, art. 10, § 1.

69-401 Terms, defined.

For purposes of sections 69-401 to 69-409:

(1) Regulated metals property means catalytic converters, all nonferrous metal except gold and silver, manhole covers, sewer grates, or metal beer kegs, including those kegs made of stainless steel; and

(2) Secondary metals recycler means any person, firm, or corporation in this state that:

(a) Is engaged in the business of gathering or obtaining regulated metals property that has served its original economic purpose; or

(b) Is in the business of or has facilities for performing the manufacturing process by which regulated metals property is converted into raw material products consisting of prepared grades and having an existing or potential economic value by methods including, but not limited to, processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content of the metals, but not including the exclusive use of hand tools.

Source: Laws 2008, LB766, § 1; Laws 2012, LB1049, § 1.

69-402 Secondary metals recycler; purchase of regulated metals property; information required; duration; receipt.

(1) A secondary metals recycler shall maintain a record, either as a hard copy or electronically, of all purchase transactions in which the secondary metals recycler purchases regulated metals property.

(2) The following information shall be maintained for transactions in which a secondary metals recycler purchases regulated metals property:

(a) The name and address of the secondary metals recycler;

(b) The name and signature of the individual entering the information;

(c) The date and time of the transaction;

- (d) The weight and grade of the regulated metals property purchased;
 - (e) The description made in accordance with the custom of the trade of the type of regulated metals property purchased;
 - (f) The amount of consideration given for the regulated metals property, if any;
 - (g) The name, signature, and address of the vendor of the regulated metals property;
 - (h) The motor vehicle operator's license number, state identification card number, or federal government-issued identification card number of the person delivering the regulated metals property to the secondary metals recycler;
 - (i) A photocopy of the current motor vehicle operator's license, state-issued identification card, or federal government-issued identification card of the person delivering the regulated metals property to the secondary metals recycler;
 - (j) A fingerprint from the person, but only if the person is delivering copper or catalytic converters. The fingerprint shall be taken from the right index finger, but if the right index finger is missing, the fingerprint shall be taken from the left index finger; and
 - (k) A date-and-time-stamped photograph or a date-and-time-stamped video recording of the regulated metals property.
- (3) The vendor of the regulated metals property shall receive at no charge a plain written or printed receipt of the recorded transaction containing a copy of the entries required by this section.
- (4) A secondary metals recycler shall keep and maintain the information required under this section for not less than one year after the date of the purchase of the regulated metals property.

Source: Laws 2008, LB766, § 2.

69-403 Peace officer; right to inspect property and records.

During the usual and customary business hours of a secondary metals recycler, any peace officer shall have the right to inspect:

- (1) Any and all purchased regulated metals property in the possession of the secondary metals recycler; and
- (2) Any and all records required to be maintained under section 69-402.

Source: Laws 2008, LB766, § 3.

69-404 Secondary metals recycler; limitations on payment.

No secondary metals recycler shall purchase regulated metals property for cash consideration unless the purchase total is not more than twenty-five dollars. Purchases made from the same person within a four-hour period shall be considered a single transaction. Payment shall be made payable only to the individual named on the identification presented pursuant to section 69-402. Payment for copper and catalytic converters shall be by check, and if the purchase total for copper is more than one hundred dollars, the check shall be sent by United States mail, postage prepaid.

Source: Laws 2008, LB766, § 4; Laws 2012, LB1049, § 3.

69-405 Seller; age restriction; identification required.

No secondary metals recycler shall purchase or receive regulated metals property:

- (1) From any person who is under the age of majority; or
- (2) From any person who does not possess a valid form of personal identification or current motor vehicle operator's license required under section 69-402 at the time of the recorded transaction.

Source: Laws 2008, LB766, § 5.

69-406 Limitation on metal beer keg purchase or receipt.

No secondary metals recycler shall purchase or receive a metal beer keg, including those kegs made of stainless steel, if the serial number or other identifying insignia has been destroyed, removed, altered, covered, or defaced.

Source: Laws 2008, LB766, § 6.

69-406.01 Manhole cover or sewer grate; purchase or receipt; limitations; payment.

No secondary metals recycler shall purchase or receive any manhole cover or sewer grate except from (1) an authorized representative of the political subdivision that owns the manhole cover or sewer grate as is evidenced by the stamping or engraving on the cover or grate or (2) a third party who has a legitimate bill-of-sale, letter of authorization, or similar approval from the political subdivision evidencing the third party's right to possess and sell the cover or grate. Payment for a manhole cover or sewer grate shall be by draft or check and sent by United States mail, postage prepaid, to the official address of the finance department of such political subdivision or to the third-party seller. Such draft or check shall be made payable only to the political subdivision or to the third-party seller.

Source: Laws 2012, LB1049, § 2.

69-407 Exemptions.

Sections 69-401 to 69-409 do not apply to:

- (1) Purchases of regulated metals property from a manufacturing, industrial, or other commercial vendor that generates or sells regulated metals property in the ordinary course of its business;
- (2) The collection or purchase of regulated metals property in the form of beverage or food cans; or
- (3) Recycling or neighborhood cleanup programs contracted or sponsored by the state or any political subdivision.

Source: Laws 2008, LB766, § 7; Laws 2012, LB1049, § 4.

69-408 Violation; penalty.

Any person violating any of the provisions of sections 69-401 to 69-409 is guilty of a Class II misdemeanor.

Source: Laws 2008, LB766, § 8; Laws 2012, LB1049, § 5.

69-409 Sections; how construed.

Nothing in sections 69-401 to 69-409 shall be construed to abrogate or affect the provisions of any lawful rule, regulation, resolution, ordinance, or statute which is more restrictive than sections 69-401 to 69-409.

Source: Laws 2008, LB766, § 9; Laws 2012, LB1049, § 6.

- 69-410 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-411 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-412 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-413 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-414 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-415 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-416 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-417 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-418 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-419 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-420 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-421 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-422 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-423 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-424 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-425 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-426 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-427 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-428 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-429 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-430 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-431 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-432 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-433 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-434 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-435 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-436 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-437 Repealed. Laws 1963, c. 544, art. 10, § 1.

- 69-438 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-439 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-440 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-441 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-442 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-443 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-444 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-445 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-446 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-447 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-448 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-449 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-450 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-451 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-452 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-453 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-454 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-455 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-456 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-457 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-458 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-459 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-460 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-461 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-462 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-463 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-464 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-465 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-466 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-467 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-468 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-469 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-470 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-471 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-472 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-473 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-474 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-475 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-476 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-477 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-478 Repealed. Laws 1963, c. 544, art. 10, § 1.

ARTICLE 5

REDUCED CIGARETTE IGNITION PROPENSITY ACT

Section

69-501. Act, how cited.

69-502. Terms, defined.

69-503. Cigarettes; testing; requirements; performance standard; manufacturer; duties; civil penalty; State Fire Marshal; powers and duties.

69-504. Manufacturer; written certification; contents; fee; Reduced Cigarette Ignition Propensity Fund; created; use; investment; altered cigarettes; retesting required.

69-505. Marking; inspections.

69-506. Violations; civil penalty; seizure and destruction; additional remedies; Attorney General; powers and duties.

69-507. Tax Commissioner; power to inspect; notice to State Fire Marshal.

69-508. Attorney General; enforcement powers.

69-509. Act; exemptions.

69-510. Termination of act; conditions; preemption of local law.

69-511. State Fire Marshal; rules and regulations.

69-501 Act, how cited.

Sections 69-501 to 69-511 shall be known and may be cited as the Reduced Cigarette Ignition Propensity Act.

Source: Laws 2009, LB198, § 1.

69-502 Terms, defined.

For purposes of the Reduced Cigarette Ignition Propensity Act:

(1) Agent means any person authorized by the Tax Commissioner to purchase and affix stamps or cigarette tax meter impressions on packages of cigarettes under sections 77-2601 to 77-2615;

(2) Cigarette has the same meaning as in section 77-2601;

(3) Consumer testing means an assessment of cigarettes that is conducted by a manufacturer, or under the control or direction of a manufacturer, for the purpose of evaluating consumer acceptance of the cigarettes;

(4) Manufacturer means:

(a) Any entity which manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that such manufacturer intends to sell in this state, including cigarettes intended to be sold in the United States through an importer;

(b) The first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original manufacturer or maker does not intend to be sold in the United States; or

(c) Any entity that becomes a successor of an entity described in subdivision (4)(a) or (b) of this section;

(5) Quality control and quality assurance program means the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of the testing. Such a program ensures that the testing repeatability remains within the required repeatability values stated in section 69-503 for all test trials used to certify cigarettes in accordance with the Reduced Cigarette Ignition Propensity Act;

(6) Repeatability means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall ninety-five percent of the time;

(7) Retail dealer means any person, other than a manufacturer or wholesale dealer, engaged in selling cigarettes or tobacco products;

(8) Sale means any transfer for consideration, exchange, barter, gift, offer for sale, or distribution in any manner or by any means whatsoever;

(9) Sell means to sell or to offer or agree to do the same; and

(10) Wholesale dealer means any person, other than a manufacturer, who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale and any person who owns, operates, or maintains one or more cigarette or tobacco product vending machines in, at, or upon premises owned or occupied by any other person.

Source: Laws 2009, LB198, § 2; Laws 2011, LB590, § 3.

69-503 Cigarettes; testing; requirements; performance standard; manufacturer; duties; civil penalty; State Fire Marshal; powers and duties.

(1) Except as provided in subsection (7) of this section, no cigarettes may be sold or offered for sale in this state or offered for sale or sold to persons located in this state unless the cigarettes have been tested in accordance with the following test method and meet the performance standard specified in this section, a written certification has been filed by the manufacturer with the State Fire Marshal in accordance with section 69-504, and the cigarettes have been marked in accordance with section 69-505. Testing shall be as follows:

(a) Testing of cigarettes shall be conducted in accordance with the American Society of Testing and Materials Standard E2187-04, Standard Test Method for Measuring the Ignition Strength of Cigarettes;

(b) Testing shall be conducted on ten layers of filter paper;

(c) No more than twenty-five percent of the cigarettes tested in a test trial in accordance with this subsection shall exhibit full-length burns. Forty replicate tests shall comprise a complete test trial for each cigarette tested;

(d) The performance standard required by this subsection shall only be applied to a complete test trial;

(e) Written certifications shall be based upon testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization or other comparable accreditation standard required by the State Fire Marshal;

(f) Laboratories conducting testing in accordance with this subsection shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results. The repeatability value shall be no greater than 0.19;

(g) This subsection does not require additional testing if cigarettes are tested consistent with the Reduced Cigarette Ignition Propensity Act for any other purpose; and

(h) Testing performed or sponsored by the State Fire Marshal to determine a cigarette's compliance with the performance standard required by this section shall be conducted in accordance with this subsection.

(2) Each cigarette listed in a certification submitted pursuant to section 69-504 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard set forth in this section shall have at least two nominally identical bands on the paper surrounding the tobacco column. At least one complete band shall be located at least fifteen millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least two bands fully located at least fifteen millimeters from the lighting end and ten millimeters from the filter end of the tobacco column, or ten millimeters from the labeled end of the tobacco column for nonfiltered cigarettes.

(3) A manufacturer of a cigarette that the State Fire Marshal determines cannot be tested in accordance with the test method prescribed in subdivision (1)(a) of this section shall propose a test method and performance standard for the cigarette to the State Fire Marshal. If the State Fire Marshal determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in the Reduced Cigarette Ignition Propensity Act and the State Fire Marshal finds that the officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under a legal provision comparable to this section, then the State Fire Marshal shall authorize that manufacturer to employ the alternative test method and performance standard to certify that cigarette for sale in this state, unless the State Fire Marshal demonstrates a reasonable basis why the alternative test should not be accepted under the act. All other applicable requirements of this section shall apply to the manufacturer.

(4) Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of three years and shall make copies of these reports available to the State Fire Marshal and the Attorney General upon written request. Any manufacturer who fails to make copies of these reports available within sixty days after receiving a written request shall be subject to a civil penalty not to exceed ten thousand dollars for

each day after the sixtieth day that the manufacturer does not make such copies available.

(5) The State Fire Marshal may adopt a subsequent American Society of Testing and Materials Standard Test Method for Measuring the Ignition Strength of Cigarettes upon a finding that such subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with the American Society of Testing and Materials Standard E2187-04 and the performance standard in subdivision (1)(c) of this section.

(6) The State Fire Marshal shall review the effectiveness of this section and report every three years to the Legislature the State Fire Marshal's findings and, if appropriate, recommendations for legislation to improve the effectiveness of this section. The report and legislative recommendations shall be submitted electronically no later than November 15 each three-year period.

(7) The requirements of subsection (1) of this section shall not prohibit wholesale or retail dealers from selling their existing inventory of cigarettes on or after January 1, 2010, if the wholesale or retail dealer can establish that state tax stamps were affixed to the cigarettes prior to such date and if the wholesale or retail dealer can establish that the inventory was purchased prior to such date in comparable quantity to the inventory purchased during the same period of the prior year.

(8) The Reduced Cigarette Ignition Propensity Act shall be implemented in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes as such standards existed on January 1, 2009.

Source: Laws 2009, LB198, § 3; Laws 2012, LB782, § 98.

69-504 Manufacturer; written certification; contents; fee; Reduced Cigarette Ignition Propensity Fund; created; use; investment; altered cigarettes; retesting required.

(1) Each manufacturer shall submit to the State Fire Marshal a written certification attesting that:

(a) Each cigarette listed in the certification has been tested in accordance with section 69-503; and

(b) Each cigarette listed in the certification meets the performance standard set forth in section 69-503.

(2) Each cigarette listed in the certification shall be described with the following information:

(a) Brand or trade name on the package;

(b) Style, such as light or ultra light;

(c) Length in millimeters;

(d) Circumference in millimeters;

(e) Flavor, such as menthol or chocolate, if applicable;

(f) Filter or nonfilter;

(g) Package description, such as soft pack or box;

(h) Marking pursuant to section 69-505;

(i) The name, address, and telephone number of the laboratory, if different than the manufacturer, that conducted the test; and

(j) The date that the testing occurred.

(3) The State Fire Marshal shall make the certifications available to the Attorney General for purposes consistent with the Reduced Cigarette Ignition Propensity Act and the Department of Revenue for the purposes of ensuring compliance with this section.

(4) Each cigarette certified under this section shall be recertified every four years.

(5) At the time a manufacturer submits a written certification under this section, the manufacturer shall pay to the State Fire Marshal a fee of one thousand dollars for each brand family of cigarettes identified in the certification. The fee paid shall apply to all cigarettes listed in the brand family identified in the certification and shall include any new cigarette certified within the brand family during the four-year certification period.

(6) The Reduced Cigarette Ignition Propensity Fund is created. The fund shall consist of all certification fees submitted by manufacturers in addition to any other funds made available for such purpose. The State Fire Marshal shall use the fund to carry out the act. Fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(7) If a manufacturer has certified a cigarette pursuant to this section and thereafter makes any change to such cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards required by the Reduced Cigarette Ignition Propensity Act, such cigarette shall not be sold or offered for sale in this state until the manufacturer retests the cigarette in accordance with the testing standards set forth in section 69-503 and maintains records of that retesting as required by section 69-503. Any altered cigarette which does not meet the performance standard set forth in section 69-503 shall not be sold in this state.

Source: Laws 2009, LB198, § 4.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

69-505 Marking; inspections.

(1) Cigarettes that are certified by a manufacturer in accordance with section 69-504 shall be marked to indicate compliance with the requirements of section 69-503. The marking shall be either:

(a) Any marking in use and approved for sale in New York pursuant to the New York Fire Safety Standards for Cigarettes as such standards existed on January 1, 2009; or

(b) The letters "FSC" which signifies Fire Standards Compliant.

(2) The marking shall appear in eight-point type or larger and be permanently printed, stamped, engraved, or embossed on the package at or near the Universal Product Code.

(3) A manufacturer shall use only one marking and shall apply this marking uniformly for all packages, including, but not limited to, packs, cartons, and cases, and brands marketed by that manufacturer.

(4) Manufacturers certifying cigarettes in accordance with section 69-504 shall provide a copy of the certifications to all wholesale dealers and agents to which they sell cigarettes and shall also provide sufficient copies of an illustration of the package marking utilized by the manufacturer pursuant to this section for each retail dealer to which the wholesale dealers or agents sell cigarettes. Wholesale dealers and agents shall provide a copy of these package markings received from manufacturers to all retail dealers to which they sell cigarettes. Wholesale dealers, agents, and retail dealers shall permit the State Fire Marshal, the Department of Revenue, and their employees or peace officers of this state to inspect markings of cigarette packaging marked in accordance with this section.

Source: Laws 2009, LB198, § 5.

69-506 Violations; civil penalty; seizure and destruction; additional remedies; Attorney General; powers and duties.

(1) A manufacturer, wholesale dealer, agent, or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of section 69-503, shall be liable to a civil penalty not to exceed ten thousand dollars per each sale of such cigarettes for a first offense and shall be liable to a civil penalty not to exceed twenty-five thousand dollars for any subsequent offense per each sale of such cigarettes, except that this penalty against any such person or entity shall not exceed one hundred thousand dollars during any thirty-day period.

(2) A retail dealer who knowingly sells or offers to sell fewer than one thousand cigarettes in violation of section 69-503 shall be liable to a civil penalty not to exceed five hundred dollars for a first offense and shall be liable to a civil penalty not to exceed two thousand dollars for any subsequent offense for each such sale or offer for sale of such cigarettes. A retail dealer who knowingly sells or offers to sell one thousand or more cigarettes in violation of section 69-503 shall be liable to a civil penalty not to exceed one thousand dollars for a first offense and shall be liable to a civil penalty not to exceed five thousand dollars for any subsequent offense per each such sale or offer of sale of such cigarettes. The penalty against any retail dealer under this subsection shall not exceed twenty-five thousand dollars during any thirty-day period.

(3) In addition to any civil penalty, any corporation, partnership, sole proprietor, limited partnership, limited liability company, limited liability partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to section 69-504 shall be liable to a civil penalty of seventy-five thousand dollars for the first false certification and shall be liable to a civil penalty not to exceed one hundred fifty thousand dollars for each subsequent false certification.

(4) Any person violating any other provision of the Reduced Cigarette Ignition Propensity Act shall be liable to a civil penalty not to exceed one thousand dollars for a first offense and shall be liable to a civil penalty not to exceed five thousand dollars for any subsequent offense.

(5) Whenever any peace officer of this state or duly authorized representative of the State Fire Marshal or Tax Commissioner discovers any cigarettes (a) for

which no certification has been filed as required by section 69-504 or (b) that have not been marked as required by section 69-505, such peace officer or representative may seize and take possession of such cigarettes. Cigarettes seized pursuant to this subsection shall be destroyed, except that prior to the destruction of any cigarette seized pursuant to this subsection the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarette.

(6) In addition to any other remedy provided by law, the Attorney General may file an action in a court of competent jurisdiction for a violation of the Reduced Cigarette Ignition Propensity Act, including petitioning (a) for preliminary or permanent injunctive relief against any manufacturer, importer, wholesale dealer, retail dealer, agent, or other person or entity to enjoin such entity from selling, offering to sell, or affixing tax stamps or cigarette tax meter impressions to any cigarette that does not comply with the requirements of the Reduced Cigarette Ignition Propensity Act or (b) to recover any costs or damages suffered by the state because of a violation of the act, including enforcement costs relating to the specific violation and attorney's fees. Each violation of the act or of rules or regulations adopted and promulgated under the act constitutes a separate civil violation for which the Attorney General may obtain relief. Upon obtaining judgment for injunctive relief under this subsection, the Attorney General shall provide a copy of the judgment to all wholesale dealers and agents to which the cigarette has been sold.

Source: Laws 2009, LB198, § 6.

69-507 Tax Commissioner; power to inspect; notice to State Fire Marshal.

The Tax Commissioner, in the regular course of conducting inspections of wholesale dealers, agents, and retail dealers, as authorized under section 77-2605, may inspect cigarettes to determine if the cigarettes are marked as required by section 69-505. If the cigarettes are not marked as required, the Tax Commissioner shall notify the State Fire Marshal.

Source: Laws 2009, LB198, § 7.

69-508 Attorney General; enforcement powers.

To enforce the provisions of the Reduced Cigarette Ignition Propensity Act, the Attorney General may examine the books, papers, invoices, and other records of any person in possession, control, or occupancy of any premises where cigarettes are placed, stored, sold, or offered for sale, as well as the stock of cigarettes on the premises. Every person in the possession, control, or occupancy of any premises where cigarettes are placed, sold, or offered for sale shall give the Attorney General the means, facilities, and opportunity for the examinations authorized by the act.

Source: Laws 2009, LB198, § 8.

69-509 Act; exemptions.

Nothing in the Reduced Cigarette Ignition Propensity Act shall be construed to prohibit:

(1) Any person or entity from manufacturing or selling cigarettes that do not meet the requirements of section 69-503 if the cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States and

that person or entity has taken reasonable steps to ensure that such cigarettes will not be sold or offered for sale to persons located in this state; or

(2) The use of cigarettes solely for the purpose of consumer testing utilizing only the quantity of cigarettes that is reasonably necessary for the assessment.

Source: Laws 2009, LB198, § 9.

69-510 Termination of act; conditions; preemption of local law.

(1) The Reduced Cigarette Ignition Propensity Act shall terminate if a federal reduced cigarette ignition propensity standard that preempts the act is adopted and becomes effective.

(2) The Reduced Cigarette Ignition Propensity Act preempts any local law on the subject and no political subdivision shall enact or enforce any ordinance or other local law or regulation conflicting with any provision of the act or with any policy of this state expressed by the act, whether the policy is expressed by inclusion of a provision in the act or by exclusion of that subject from the act.

Source: Laws 2009, LB198, § 10.

69-511 State Fire Marshal; rules and regulations.

The State Fire Marshal may adopt and promulgate rules and regulations necessary to carry out the Reduced Cigarette Ignition Propensity Act in accordance with the Administrative Procedure Act.

Source: Laws 2009, LB198, § 11.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 6

ASSIGNMENT OF ACCOUNTS RECEIVABLE

Section

- 69-601. Repealed. Laws 1967, c. 417, § 1.
- 69-602. Repealed. Laws 1967, c. 417, § 1.
- 69-603. Repealed. Laws 1967, c. 417, § 1.
- 69-604. Repealed. Laws 1967, c. 417, § 1.
- 69-605. Repealed. Laws 1967, c. 417, § 1.
- 69-606. Repealed. Laws 1967, c. 417, § 1.
- 69-607. Repealed. Laws 1967, c. 417, § 1.
- 69-608. Repealed. Laws 1967, c. 417, § 1.
- 69-609. Repealed. Laws 1967, c. 417, § 1.
- 69-610. Repealed. Laws 1967, c. 417, § 1.
- 69-611. Repealed. Laws 1967, c. 417, § 1.
- 69-612. Repealed. Laws 1967, c. 417, § 1.
- 69-613. Repealed. Laws 1967, c. 417, § 1.
- 69-614. Repealed. Laws 1967, c. 417, § 1.
- 69-615. Repealed. Laws 1967, c. 417, § 1.
- 69-616. Repealed. Laws 1967, c. 417, § 1.
- 69-617. Repealed. Laws 1967, c. 417, § 1.
- 69-618. Repealed. Laws 1967, c. 417, § 1.
- 69-619. Repealed. Laws 1967, c. 417, § 1.
- 69-620. Repealed. Laws 1967, c. 417, § 1.
- 69-621. Repealed. Laws 1967, c. 417, § 1.

69-601 Repealed. Laws 1967, c. 417, § 1.

- 69-602 Repealed. Laws 1967, c. 417, § 1.
- 69-603 Repealed. Laws 1967, c. 417, § 1.
- 69-604 Repealed. Laws 1967, c. 417, § 1.
- 69-605 Repealed. Laws 1967, c. 417, § 1.
- 69-606 Repealed. Laws 1967, c. 417, § 1.
- 69-607 Repealed. Laws 1967, c. 417, § 1.
- 69-608 Repealed. Laws 1967, c. 417, § 1.
- 69-609 Repealed. Laws 1967, c. 417, § 1.
- 69-610 Repealed. Laws 1967, c. 417, § 1.
- 69-611 Repealed. Laws 1967, c. 417, § 1.
- 69-612 Repealed. Laws 1967, c. 417, § 1.
- 69-613 Repealed. Laws 1967, c. 417, § 1.
- 69-614 Repealed. Laws 1967, c. 417, § 1.
- 69-615 Repealed. Laws 1967, c. 417, § 1.
- 69-616 Repealed. Laws 1967, c. 417, § 1.
- 69-617 Repealed. Laws 1967, c. 417, § 1.
- 69-618 Repealed. Laws 1967, c. 417, § 1.
- 69-619 Repealed. Laws 1967, c. 417, § 1.
- 69-620 Repealed. Laws 1967, c. 417, § 1.
- 69-621 Repealed. Laws 1967, c. 417, § 1.

ARTICLE 7

UNIFORM TRUST RECEIPTS ACT

- Section
- 69-701. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-701.01. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-701.02. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-701.03. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-702. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-702.01. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-702.02. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-702.03. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-702.04. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-703. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-703.01. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-704. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-705. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-706. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-707. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-708. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-709. Repealed. Laws 1963, c. 544, art. 10, § 1.

Section

- 69-709.01. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-710. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-711. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-712. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-713. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-714. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-715. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-716. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-717. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-718. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-719. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 69-720. Repealed. Laws 1963, c. 544, art. 10, § 1.

69-701 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-701.01 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-701.02 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-701.03 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-702 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-702.01 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-702.02 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-702.03 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-702.04 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-703 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-703.01 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-704 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-705 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-706 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-707 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-708 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-709 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-709.01 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-710 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-711 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-712 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-713 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-714 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-715 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-716 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-717 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-718 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-719 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-720 Repealed. Laws 1963, c. 544, art. 10, § 1.

**ARTICLE 8
PUBLIC AUCTIONS**

Section

- 69-801. Repealed. Laws 1972, LB 1410, § 3.
- 69-802. Repealed. Laws 1972, LB 1410, § 3.
- 69-803. Repealed. Laws 1972, LB 1410, § 3.
- 69-804. Repealed. Laws 1972, LB 1410, § 3.
- 69-805. Repealed. Laws 1972, LB 1410, § 3.
- 69-806. Repealed. Laws 1972, LB 1410, § 3.
- 69-807. Repealed. Laws 1972, LB 1410, § 3.
- 69-808. Repealed. Laws 1972, LB 1410, § 3.
- 69-809. Repealed. Laws 1972, LB 1410, § 3.
- 69-810. Repealed. Laws 1972, LB 1410, § 3.
- 69-811. Repealed. Laws 1972, LB 1410, § 3.
- 69-812. Repealed. Laws 1972, LB 1410, § 3.
- 69-813. Repealed. Laws 1972, LB 1410, § 3.
- 69-814. Repealed. Laws 1972, LB 1410, § 3.
- 69-815. Repealed. Laws 1972, LB 1410, § 3.
- 69-816. Repealed. Laws 1972, LB 1410, § 3.
- 69-817. Repealed. Laws 1972, LB 1410, § 3.

69-801 Repealed. Laws 1972, LB 1410, § 3.

69-802 Repealed. Laws 1972, LB 1410, § 3.

69-803 Repealed. Laws 1972, LB 1410, § 3.

69-804 Repealed. Laws 1972, LB 1410, § 3.

69-805 Repealed. Laws 1972, LB 1410, § 3.

69-806 Repealed. Laws 1972, LB 1410, § 3.

69-807 Repealed. Laws 1972, LB 1410, § 3.

69-808 Repealed. Laws 1972, LB 1410, § 3.

69-809 Repealed. Laws 1972, LB 1410, § 3.

69-810 Repealed. Laws 1972, LB 1410, § 3.

69-811 Repealed. Laws 1972, LB 1410, § 3.

69-812 Repealed. Laws 1972, LB 1410, § 3.

69-813 Repealed. Laws 1972, LB 1410, § 3.

69-814 Repealed. Laws 1972, LB 1410, § 3.

69-815 Repealed. Laws 1972, LB 1410, § 3.

69-816 Repealed. Laws 1972, LB 1410, § 3.

69-817 Repealed. Laws 1972, LB 1410, § 3.

ARTICLE 9

SALES ON SUNDAY

Section

- 69-901. Repealed. Laws 1972, LB 1410, § 3.
- 69-902. Repealed. Laws 1972, LB 1410, § 3.
- 69-903. Repealed. Laws 1972, LB 1410, § 3.
- 69-904. Repealed. Laws 1972, LB 1410, § 3.
- 69-905. Repealed. Laws 1972, LB 1410, § 3.
- 69-906. Repealed. Laws 1972, LB 1410, § 3.
- 69-907. Repealed. Laws 1972, LB 1410, § 3.
- 69-908. Repealed. Laws 1972, LB 1410, § 3.

69-901 Repealed. Laws 1972, LB 1410, § 3.

69-902 Repealed. Laws 1972, LB 1410, § 3.

69-903 Repealed. Laws 1972, LB 1410, § 3.

69-904 Repealed. Laws 1972, LB 1410, § 3.

69-905 Repealed. Laws 1972, LB 1410, § 3.

69-906 Repealed. Laws 1972, LB 1410, § 3.

69-907 Repealed. Laws 1972, LB 1410, § 3.

69-908 Repealed. Laws 1972, LB 1410, § 3.

ARTICLE 10

COMMERCIAL CHICKS AND POULTRY

Section

- 69-1001. Terms, defined.
- 69-1002. Sale at auction; containers; labels; statement required.
- 69-1003. Sale at auction; false statements; liability.
- 69-1004. Sale at auction by carrier; when act inapplicable.
- 69-1005. Violations; penalty.
- 69-1006. Poultry; sales record; exceptions.
- 69-1007. Poultry; sales record; violation; penalty.
- 69-1008. Poultry; sale or delivery; false representations; penalty.

69-1001 Terms, defined.

For the purpose of sections 69-1001 to 69-1008, unless the context otherwise requires:

- (1) Commercial hatchery shall mean a place where chicks are hatched for the purpose of resale or where chicks are hatched for hire; and
- (2) Commercial chicks shall mean any domestic fowl produced in a commercial hatchery, under the age of six weeks or not to exceed one pound in weight, and which are offered for resale by the hatchery or owner of chicks.

Source: Laws 1967, c. 414, § 1, p. 1279.

69-1002 Sale at auction; containers; labels; statement required.

When commercial chicks are offered for sale or sold at public auction, each box, crate, coop, or other container, shall be labeled with the sworn statement of the owner offering such chicks for sale at public auction, designating the number of live chicks in each such container, the breed and variety, the date on which such chicks were hatched, and the name and location of the commercial hatchery where hatched, whether such chicks were sexed, or unsexed, and if sexed, such sworn statement shall designate whether contents are cockerel chicks or pullet chicks, and any other representation made at or prior to the time of the sale relative to the breed and variety, and such tests as shall have been made on the parent stock for pullorum disease.

Source: Laws 1967, c. 414, § 2, p. 1279.

69-1003 Sale at auction; false statements; liability.

The owner of commercial chicks desiring to sell them at public auction shall furnish to the person who conducts the sale a duplicate of the sworn statement required by section 69-1002, which shall be retained by the person conducting the sale. When such copy of the sworn statement has been furnished to him, the person conducting the sale shall be relieved from any responsibility or liability concerning incorrect or false statements made in regard to such commercial chicks.

Source: Laws 1967, c. 414, § 3, p. 1280.

69-1004 Sale at auction by carrier; when act inapplicable.

The provisions of sections 69-1001 to 69-1005 shall not apply to baby chicks in the custody of a common carrier upon which the freight has been prepaid, and which must be sold at public auction because delivery thereof cannot be effected beyond the control of such common carrier.

Source: Laws 1967, c. 414, § 4, p. 1280.

69-1005 Violations; penalty.

Any person, firm, partnership, limited liability company, or corporation who violates any of the provisions of sections 69-1001 to 69-1005 shall be deemed guilty of a Class V misdemeanor.

Source: Laws 1967, c. 414, § 5, p. 1280; Laws 1977, LB 39, § 130; Laws 1993, LB 121, § 409.

69-1006 Poultry; sales record; exceptions.

Whenever any chickens, ducks, geese, turkeys, or other domestic fowls or poultry, whether alive or dressed, shall be sold to any public buyer, a record of the same shall be taken by the purchaser, and signed by the seller. Such record shall be in a simple form, and for convenience may be made in book form in units of fifty or more, and a duplicate thereof made and furnished at the option of the parties. Such records shall provide for showing at least the number of birds or poultry purchased, and the kind or breed of poultry purchased, the name of the person or persons who raised the birds or poultry purchased, and if not raised by the seller, where he procured them. It is further provided that the wholesale dealer is exempt from the provisions of sections 69-1006 to 69-1008 upon purchase made by him from a retail dealer or a regular local

agent, but not upon purchase made direct from a producer or an individual who procured the same from a producer. Regular local agents of a wholesaler, and retail dealers selling to the wholesaler, are likewise exempt from the provisions relating to the selling of poultry.

Source: Laws 1967, c. 414, § 6, p. 1280.

69-1007 Poultry; sales record; violation; penalty.

Every failure, neglect or refusal to comply with the provisions of section 69-1006 shall constitute a separate violation of such section, and for each separate offense the purchaser may be guilty of a Class V misdemeanor.

Source: Laws 1967, c. 414, § 7, p. 1281; Laws 1977, LB 39, § 131.

69-1008 Poultry; sale or delivery; false representations; penalty.

Any person selling, bartering or delivering poultry to such retail or wholesale dealer therein, who shall fail, refuse or neglect to furnish full, complete and truthful information for such a receipt as provided in section 69-1006 and shall render a false statement in such a receipt concerning who raised the poultry described therein, or where and from whom he secured such poultry, shall be guilty of a violation of the provisions of this section, and shall, for each separate offense, be guilty of a Class V misdemeanor.

Source: Laws 1967, c. 414, § 8, p. 1281; Laws 1977, LB 39, § 132.

ARTICLE 11

BINDER TWINE

Section

69-1101. Labels required.

69-1102. Violations; penalty.

69-1101 Labels required.

A stamp or label shall be placed on every ball of binder twine sold, exposed or offered for sale in this state, giving the name of the manufacturer or importer, the number of feet to the pound in such ball, the material from which it is made, the tensile strength, the percent of oil it contains, and the date of manufacture. The deficiency in length shall not exceed five percent of the amount as stated on the label or stamp.

Source: Laws 1967, c. 415, § 1, p. 1281.

69-1102 Violations; penalty.

Every manufacturer, importer or dealer who fails to comply with the provisions of section 69-1101 shall be guilty of a Class V misdemeanor for each and every such ball sold, offered or exposed for sale.

Source: Laws 1967, c. 415, § 2, p. 1282; Laws 1977, LB 39, § 133.

ARTICLE 12

DEBT MANAGEMENT

Section

69-1201. Terms, defined.

69-1202. Debt management; exceptions to act.

69-1203. License; required.

Section

- 69-1204. License; application; fees; bond; expiration; copy of contract.
- 69-1205. License; application; investigation; issuance.
- 69-1206. License; renewal; fee; bond.
- 69-1207. License; Secretary of State; deny; revoke; suspend; nontransferable.
- 69-1208. Rules and regulations; promulgation.
- 69-1209. Licensee; contract with debtor required; contents.
- 69-1210. Licensee; bank account; separate; books and records.
- 69-1211. Licensee; examination; cost; payment.
- 69-1212. Licensee; debtor; fee; agreement; limitations.
- 69-1213. Licensee; duties.
- 69-1214. Licensee; acts forbidden.
- 69-1215. Unlawful acts; penalty.
- 69-1216. Limitation of actions.
- 69-1217. Fees; disposition.

69-1201 Terms, defined.

As used in sections 69-1201 to 69-1217, unless the context otherwise requires:

- (1) Debt management shall mean the planning and management of the financial affairs of a debtor for a fee from the debtor and the receiving therefrom of money or evidences thereof for the purpose of distributing the same to his or her creditors in payment or partial payment of his or her obligations;
- (2) Licensee shall mean any individual, partnership, limited liability company, unincorporated association, or corporation licensed under such sections;
- (3) Secretary shall mean the Secretary of State;
- (4) Debtor shall mean a wage earner whose principal income is derived from wages, salary, or commission;
- (5) Office shall mean each location by street number, building number, city, and state where any person engages in debt management; and
- (6) Creditor shall mean a person for whose benefit money is being collected and disbursed by licensees.

Source: Laws 1967, c. 377, § 1, p. 1179; Laws 1993, LB 121, § 410.

69-1202 Debt management; exceptions to act.

Any person engaged in debt management shall be deemed to be rendering financial planning service, but sections 69-1201 to 69-1217 shall not apply to the following when engaged in the regular course of their respective businesses and professions:

- (1) Attorneys at law;
- (2) Banks, fiduciaries, financing and lending institutions, as duly authorized and admitted to transact business in this state and performing credit and financial adjusting service in the regular course of their principal business;
- (3) Title insurers and abstract companies, while doing an escrow business;
- (4) Employees of licensees under sections 69-1201 to 69-1217; or
- (5) Judicial officers or others acting under court orders.

Source: Laws 1967, c. 377, § 2, p. 1180.

69-1203 License; required.

After January 1, 1969, it shall be unlawful for any person to engage in the business of debt management without first obtaining a license as required in sections 69-1201 to 69-1217.

Source: Laws 1967, c. 377, § 3, p. 1180.

69-1204 License; application; fees; bond; expiration; copy of contract.

Any person desiring to obtain a license to engage in the debt management business in this state shall file with the secretary an application in writing, under oath, setting forth his or her business name, his or her social security number if the applicant is an individual, the exact location of his or her office, names and addresses of all officers and directors if an association or a corporation, if a partnership, the partnership name and the names and addresses of all partners, and if a limited liability company, the company name and the names and addresses of all members, and a copy of the certificate of registration of trade name, certificate of partnership, articles of organization, or articles of incorporation. At the time of filing the application the applicant shall pay to the secretary a license fee of two hundred dollars for the main office within each county and one hundred dollars for each additional office. An initial investigation fee of two hundred dollars shall also be paid to the secretary at the time of filing the application. At the time of filing the application the applicant shall furnish a bond to the people of the state in the sum of ten thousand dollars, conditioned upon the faithful accounting of all money collected upon accounts entrusted to such person engaged in debt management, and their employees and agents. The aggregate liability of the surety to all claimants doing business with the office for which the bond is filed shall in no event exceed the amount of such bond. The bond or bonds shall be approved by the secretary and filed in the office of the Secretary of State. No person, firm, limited liability company, or corporation shall engage in the business of debt management until a good and sufficient bond is filed in accordance with the provisions of sections 69-1201 to 69-1217.

Each licensee shall furnish with his or her application a blank copy of the contract he or she intends to use between himself or herself and the debtor and shall notify the secretary of all changes and amendments thereto within thirty days of such changes and amendments.

The license issued under sections 69-1201 to 69-1217 shall expire on December 31 next following its issuance unless sooner surrendered, revoked, or suspended, but may be renewed as provided in such sections.

Source: Laws 1967, c. 377, § 4, p. 1180; Laws 1982, LB 928, § 50; Laws 1983, LB 447, § 83; Laws 1993, LB 121, § 411; Laws 1997, LB 752, § 155.

69-1205 License; application; investigation; issuance.

Upon the filing of the application and the payment of the fees and the approval of the bond, the secretary shall investigate the facts and if he or she finds that the financial responsibility, experience, character, and general fitness of the applicant and of the members thereof, if the applicant is a partnership, a limited liability company, or an association, and of the officers and directors thereof, if the applicant is a corporation, are such as to command the confidence of the community to warrant belief that the business will be operated fairly and honestly within the purposes of sections 69-1201 to 69-1217 and that

the applicant or the applicant and the members thereof or the applicant and the officers and directors thereof have not been convicted of a felony, or that such person has not had a record of having defaulted in the payment of money collected for others, including the discharge of such debts through bankruptcy proceedings, the secretary shall issue the applicant a license to engage in the debt management business in accordance with sections 69-1201 to 69-1217. The secretary may require as part of the application a credit report and other information.

Source: Laws 1967, c. 377, § 5, p. 1181; Laws 1993, LB 121, § 412.

69-1206 License; renewal; fee; bond.

Each licensee on or before December 1 may make application to the secretary for renewal of its license. The application shall be on the form prescribed by the secretary, and shall be accompanied by a fee of one hundred dollars, together with a bond as in the case of an original application. A separate application shall be made for each office.

Source: Laws 1967, c. 377, § 6, p. 1182; Laws 1982, LB 928, § 51.

69-1207 License; Secretary of State; deny; revoke; suspend; nontransferable.

(1) The secretary may deny, revoke or suspend any license issued or applied for under sections 69-1201 to 69-1217 for the following causes:

- (a) Conviction of a felony;
- (b) For violating any of the provisions of sections 69-1201 to 69-1217;
- (c) For fraud or deceit in procuring the issuance of a license under sections 69-1201 to 69-1217;
- (d) For indulging in a continuous course of unfair conduct; or
- (e) For insolvency, being adjudicated a bankrupt, being placed in receivership, or assigning for the benefit of creditors by any licensee or applicant for a license under sections 69-1201 to 69-1217.

(2) The denial, revocation or suspension shall only be made upon specific charges in writing, under oath, filed with the secretary, whereupon a hearing shall be had as to the reasons for any denial, revocation or suspension and a certified copy of the charges shall be served on the licensee or applicant for license not less than ten days nor more than thirty days prior to the hearing.

(3) No license shall be transferable or assignable.

Source: Laws 1967, c. 377, § 7, p. 1182.

69-1208 Rules and regulations; promulgation.

Rules and regulations issued by the secretary under sections 69-1201 to 69-1217 shall be promulgated in accordance with the provisions of the Administrative Procedure Act.

Source: Laws 1967, c. 377, § 8, p. 1182.

Cross References

Administrative Procedure Act, see section 84-920.

69-1209 Licensee; contract with debtor required; contents.

Each licensee shall make a written contract between himself and a debtor and immediately furnish the debtor with a true copy of the contract. The contract shall set forth the complete list of the debtor's obligations to be adjusted, a complete list of the creditors holding such obligations, the total charges agreed upon for the services of the licensee and the beginning and expiration date of the contract. No contract shall extend for a period longer than thirty-six months.

Source: Laws 1967, c. 377, § 9, p. 1182.

69-1210 Licensee; bank account; separate; books and records.

A licensee shall maintain a separate bank account for the benefit of debtors in which all payments received from debtors for the benefit of creditors shall be deposited and in which all payments shall remain until a remittance is made to either the debtor, creditor, or the licensee for fees. Every licensee shall keep, and use in his business, books, accounts and records which will enable the secretary to determine whether such licensee is complying with the provisions of sections 69-1201 to 69-1217 and with the rules and regulations of the secretary. Every licensee shall preserve such books, accounts and records for at least five years after making the final entry on any transaction recorded therein.

Source: Laws 1967, c. 377, § 10, p. 1183.

69-1211 Licensee; examination; cost; payment.

The secretary may examine without notice the condition and affairs of each licensee. In connection with any examination, the secretary may examine on oath any licensee, and any director, officer, employee, customer, creditor or stockholder of a licensee concerning the affairs and business of the licensee. The secretary shall ascertain whether the licensee transacts its business in the manner prescribed by law and the rules and regulations issued thereunder. The licensee shall pay the actual cost of the examination as determined by the secretary, which fee shall be deposited in the state treasury to the credit of the General Fund. Failure to pay the examination fee within thirty days of receipt of demand from the secretary shall automatically suspend the license until the fee is paid.

In the investigation of alleged violations of sections 69-1201 to 69-1217, the secretary may compel the attendance of any person or the production of any books, accounts, records and files used therein, and may examine under oath all persons in attendance pursuant thereto.

Source: Laws 1967, c. 377, § 11, p. 1183.

69-1212 Licensee; debtor; fee; agreement; limitations.

The fee of the licensee to be charged the debtor shall be agreed upon in advance and stated in the contract and provision for settlement in case of cancellation or prepayment shall be clearly stated in the contract. The total fee to be charged by the licensee shall not be more than fifteen percent of the amount of money agreed to be paid through the licensee. Fees shall be amortized over the length of the contract and no more than the monthly amortized amount may be applied to charges while the contract is in full force and effect, except that the licensee may require an initial payment by the debtor of an amount not to exceed twenty-five dollars which shall be credited to the total fee to be charged. In the event of cancellation, the licensee shall be

entitled to receive not more than twenty-five percent of the remaining unamortized fee agreed upon in the contract. No licensee shall be entitled to any fee or charge against the debtor upon any contract until the debt management program is arranged and approved by the debtor. A contract shall not be effective until a debtor has made a payment to the licensee for distribution to his creditors.

Source: Laws 1967, c. 377, § 12, p. 1183.

69-1213 Licensee; duties.

Each licensee shall:

(1) Keep complete and adequate records during the term of the contract and for a period of five years from the date of cancellation or completion of the contract with each debtor, which records shall contain complete information regarding the contract, extensions thereof, payments, disbursements and charges, which records shall be open to inspection by the secretary and his duly appointed agents during normal business hours;

(2) Make remittances to creditors within fifteen days after receipt of any funds, and within seven days if such funds are in the form of cash, less fees and costs, unless the reasonable payment of one or more of the debtor's obligations requires that such funds be held for a longer period so as to accumulate a sum certain. In no case may the licensee retain funds longer than thirty-five days after receipt from the debtor;

(3) Upon request furnish the debtor a written statement of his account each ninety days, or a verbal accounting at any time the debtor may request it during normal business hours;

(4) Accept no account unless a written and thorough budget analysis indicates that the debtor can reasonably meet the payments required by the budget analysis; and

(5) In the event a compromise of a debt is arranged by the licensee with any one or more creditors, the debtor shall have the full benefit of that compromise.

Source: Laws 1967, c. 377, § 13, p. 1184.

69-1214 Licensee; acts forbidden.

No licensee shall:

(1) Purchase from a creditor any obligation of a debtor;

(2) Operate as a collection agent and as a licensee as to the same debtor's account;

(3) Execute any contract or agreement to be signed by the debtor unless the contract or agreement is fully and completely filled in and finished;

(4) Receive or charge any fee in the form of a promissory note or other promise to pay, or receive or accept any mortgage or other security for any fee, either as to real or personal property;

(5) Pay any bonus or other consideration to any person for the referral of a debtor to his business, nor shall he accept or receive any bonus, commission or other consideration for referring any debtor to any person for any reason; or

(6) Advertise his services, display, distribute, broadcast or televise or permit to be displayed, advertised, distributed, broadcasted or televised his services in any manner whatsoever wherein is made any false, misleading or deceptive

statement or representation with regard to the services to be performed by the licensee or the charges to be made therefor.

Source: Laws 1967, c. 377, § 14, p. 1185.

69-1215 Unlawful acts; penalty.

Any person, partnership, limited liability company, association, corporation, or other group of individuals, however organized, or any owner, partner, member, officer, director, employee, agent, or representative thereof who willfully or knowingly engages in the business of debt management without the license required by sections 69-1201 to 69-1217 shall be guilty of a Class II misdemeanor.

Source: Laws 1967, c. 377, § 15, p. 1185; Laws 1977, LB 39, § 134; Laws 1993, LB 121, § 413.

69-1216 Limitation of actions.

All actions in any of the courts of this state under the provisions of sections 69-1201 to 69-1217 shall be commenced within two years next after the cause of action shall accrue.

Source: Laws 1967, c. 377, § 16, p. 1185.

69-1217 Fees; disposition.

All fees collected under the provisions of sections 69-1201 to 69-1217 shall be paid promptly into the state treasury to the credit of the General Fund.

Source: Laws 1967, c. 377, § 17, p. 1186.

ARTICLE 13

DISPOSITION OF UNCLAIMED PROPERTY

Cross References

- County judge**, payment of unclaimed funds to State Treasurer, see section 25-2717.
- Horseracing licensees**, exempt from act, see section 2-1223.
- Liquidated insurer**, disposition of unclaimed amounts under the act, see section 44-4845.
- Lottery licensees**, exempt from act, see section 9-645.

(a) UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

- Section
- 69-1301. Terms, defined.
- 69-1302. Property held or owing by a banking or financial organization or business association; presumed abandoned; when.
- 69-1303. Unclaimed funds held and owing by a life insurance corporation; presumed abandoned; when.
- 69-1304. Funds held or owing by any utility; presumed abandoned; when.
- 69-1305. Stock, shareholding, or other intangible ownership interest; presumed abandoned; when.
- 69-1305.01. Stock or other intangible ownership interest; applicability of act; conditions.
- 69-1305.02. Credit memo; presumed abandoned; when.
- 69-1305.03. Gift certificate or gift card; presumed abandoned; when.
- 69-1306. Intangible personal property distributable in voluntary dissolution; presumed abandoned; when.
- 69-1307. Intangible personal property and increment held in a fiduciary capacity; presumed abandoned; when.
- 69-1307.01. Intangible personal property held by court, public entities, or political subdivision; presumed abandoned; when.
- 69-1307.02. Unpaid wages; presumed abandoned; when.

Section

- 69-1307.03. Retirement funds; presumed abandoned; when.
- 69-1307.04. Mineral rights and proceeds; presumed abandoned; when.
- 69-1307.05. Intangible personal property held by life insurance corporation; presumed abandoned; when.
- 69-1307.06. Military medal; report and delivery to State Treasurer.
- 69-1307.07. Military medals; State Treasurer; duties.
- 69-1308. Other intangible property; general-use prepaid card; presumed abandoned; when.
- 69-1309. Owner in another state; property not presumed abandoned; when.
- 69-1310. Property presumed abandoned; reports to State Treasurer; contents; filing date; property accompany report; prevent abandonment, when; verification.
- 69-1311. Report of property presumed abandoned; notices; time; contents; exceptions.
- 69-1312. Delivery of property to State Treasurer; exceptions.
- 69-1313. Property; delivery to State Treasurer; custodian; holder relieved of liability; reimbursement.
- 69-1314. Property paid or delivered to State Treasurer; owner not entitled to income.
- 69-1315. Limitation of action; claim; effect.
- 69-1316. Abandoned property; State Treasurer; sell; when; notice; title.
- 69-1317. Abandoned property; trust funds; record; professional finder's fee; information withheld; when; proceeds of sale; transfers; Unclaimed Property Cash Fund; created; investment.
- 69-1318. Person claiming interest in property delivered to state; claim; filing.
- 69-1318.01. Payment with respect to support order obligor authorized.
- 69-1319. Claim; hearing; decision; payment.
- 69-1320. Claim; appeal; procedure.
- 69-1321. Abandoned property; State Treasurer; decline to accept; when; other payments or delivery authorized.
- 69-1322. Failure to report property; State Treasurer; powers and duties; holder; duties.
- 69-1323. Refusal to deliver property; action to enforce delivery.
- 69-1324. Failing to render report or refusing to pay or deliver property; penalty.
- 69-1325. State Treasurer; rules and regulations; adopt.
- 69-1326. Property exempt from act.
- 69-1327. Act, severability.
- 69-1328. Act, how construed.
- 69-1329. Act, how cited.
- (b) PROPERTY IN POSSESSION OF COUNTY SHERIFF
- 69-1330. Certain unclaimed property; disposition.
- 69-1331. Unclaimed property; sale; disposal; procedure.
- 69-1332. Unclaimed property; sale proceeds; disposition.

(a) UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

69-1301 Terms, defined.

As used in the Uniform Disposition of Unclaimed Property Act unless the context otherwise requires:

(a) Banking organization means any bank, trust company, savings bank, industrial bank, land bank, or safe deposit company.

(b) Business association means any corporation, joint-stock company, business trust, partnership, limited liability company, or association for business purposes of two or more individuals, but does not include a public corporation.

(c) Financial organization means any savings and loan association, building and loan association, credit union, cooperative bank, or investment company, doing business in this state.

(d) General-use prepaid card means a plastic card or other electronic payment device usable with multiple, unaffiliated sellers of goods or services.

(e) Holder means any person in possession of property subject to the act belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to the act.

(f) Life insurance corporation means any association or corporation transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not limited to, endowments and annuities.

(g) Military medal means any decoration or award that may be presented or awarded to a member of a unit of the United States Armed Forces or National Guard.

(h) Owner means a depositor in case of a deposit, a beneficiary in case of a trust, a creditor, claimant, or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to the act, or his or her legal representative.

(i) Person means any individual, business association, governmental or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

(j) Utility means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

Source: Laws 1969, c. 611, § 1, p. 2478; Laws 1992, Third Spec. Sess., LB 26, § 3; Laws 1993, LB 121, § 414; Laws 2003, LB 131, § 34; Laws 2006, LB 173, § 1; Laws 2012, LB819, § 1.

The State Board of Agriculture while operating parimutuel betting is a business association, as contemplated by the Uniform Disposition of Unclaimed Property Act. State ex rel. Marsh v. Nebraska St. Bd. of Agr., 217 Neb. 622, 350 N.W.2d 535 (1984).

69-1302 Property held or owing by a banking or financial organization or business association; presumed abandoned; when.

The following property held or owing by a banking or financial organization or by a business association is presumed abandoned:

(a) Any demand, savings, or matured time deposit that is not automatically renewable made in this state with a banking organization, together with any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has, within five years:

(1) Increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest or dividends; or

(2) Corresponded in writing with the banking organization concerning the deposit; or

(3) Otherwise indicated an interest in the deposit as evidenced by a memorandum or other record on file with the banking organization; or

(4) Owned other property to which subdivision (a)(1), (2), or (3) applies and if the banking organization corresponds in writing with the owner with regard to the property that would otherwise be presumed abandoned under subdivision

(a) of this section at the address to which correspondence regarding the other property regularly is sent; or

(5) Had another relationship with the banking organization concerning which the owner has:

(i) Corresponded in writing with the banking organization; or

(ii) Otherwise indicated an interest as evidenced by a memorandum or other record on file with the banking organization and if the banking organization corresponds in writing with the owner with regard to the property that would otherwise be abandoned under subdivision (a) of this section at the address to which correspondence regarding the other relationship regularly is sent.

(b) Any funds paid in this state toward the purchase of shares or other interest in a financial organization or any deposit that is not automatically renewable, including a certificate of indebtedness that is not automatically renewable, made therewith in this state, and any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has within five years:

(1) Increased or decreased the amount of the funds or deposit, or presented an appropriate record for the crediting of interest or dividends; or

(2) Corresponded in writing with the financial organization concerning the funds or deposit; or

(3) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum or other record on file with the financial organization; or

(4) Owned other property to which subdivision (b)(1), (2), or (3) applies and if the financial organization corresponds in writing with the owner with regard to the property that would otherwise be presumed abandoned under subdivision (b) of this section at the address to which correspondence regarding the other property regularly is sent; or

(5) Had another relationship with the financial organization concerning which the owner has:

(i) Corresponded in writing with the financial organization; or

(ii) Otherwise indicated an interest as evidenced by a memorandum or other record on file with the financial organization and if the financial organization corresponds in writing with the owner with regard to the property that would otherwise be abandoned under this subdivision (b) of this section at the address to which correspondence regarding the other relationship regularly is sent.

(c) A holder may not, with respect to property described in subdivision (a) or (b) of this section, impose any charges solely due to dormancy or cease payment of interest solely due to dormancy unless there is a written contract between the holder and the owner of the property pursuant to which the holder may impose reasonable charges or cease payment of interest or modify the imposition of such charges and the conditions under which such payment may be ceased. A holder of such property who imposes charges solely due to dormancy may not increase such charges with respect to such property during the period of dormancy. The contract required by this subdivision may be in the form of a signature card, deposit agreement, or similar agreement which contains or incorporates by reference (1) the holder's schedule of charges and the conditions, if any, under which the payment of interest may be ceased or (2) the holder's rules and regulations setting forth the holder's schedule of charges and the conditions, if any, under which the payment of interest may be ceased.

(d)(1) Any time deposit that is automatically renewable, including a certificate of indebtedness that is automatically renewable, made in this state with a banking or financial organization, together with any interest thereon, seven years after the expiration of the initial time period or any renewal time period unless the owner has, during such initial time period or renewal time period:

(i) Increased or decreased the amount of the deposit, or presented an appropriate record or other similar evidence of the deposit for the crediting of interest;

(ii) Corresponded in writing with the banking or financial organization concerning the deposit;

(iii) Otherwise indicated an interest in the deposit as evidenced by a memorandum or other record on file with the banking or financial organization;

(iv) Owned other property to which subdivision (d)(1)(i), (ii), or (iii) of this section applies and if the banking or financial organization corresponds in writing with the owner with regard to the property that would otherwise be presumed abandoned under subdivision (d) of this section at the address to which correspondence regarding the other property regularly is sent; or

(v) Had another relationship with the banking or financial organization concerning which the owner has:

(A) Corresponded in writing with the banking or financial organization; or

(B) Otherwise indicated an interest as evidenced by a memorandum or other record on file with the banking or financial organization and if the banking or financial organization corresponds in writing with the owner with regard to the property that would otherwise be abandoned under subdivision (d) of this section at the address to which correspondence regarding the other relationship regularly is sent.

(2) If, at the time provided for delivery in section 69-1310, a penalty or forfeiture in the payment of interest would result from the delivery of a time deposit subject to subdivision (d) of this section, the time for delivery shall be extended until the time when no penalty or forfeiture would result.

(e) Any sum payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization or business association is directly liable, including, by way of illustration but not of limitation, certificates of deposit that are not automatically renewable, drafts, money orders, and traveler's checks, that, with the exception of money orders and traveler's checks, has been outstanding for more than five years from the date it was payable, or from the date of its issuance if payable on demand, or, in the case of (i) money orders, that has been outstanding for more than seven years from the date of issuance and (ii) traveler's checks, that has been outstanding for more than fifteen years from the date of issuance, unless the owner has within five years, or within seven years in the case of money orders and within fifteen years in the case of traveler's checks, corresponded in writing with the banking or financial organization or business association concerning it, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the banking or financial organization or business association.

(f) Any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository or agency or collateral deposit box in this state on which the lease or rental period has

expired due to nonpayment of rental charges or other reason, or any surplus amounts arising from the sale thereof pursuant to law, that have been unclaimed by the owner for more than five years from the date on which the lease or rental period expired.

(g) For the purposes of this section failure of the United States mails to return a letter, duly deposited therein, first-class postage prepaid, to the last-known address of an owner of tangible or intangible property shall be deemed correspondence in writing and shall be sufficient to overcome the presumption of abandonment created herein. A memorandum or writing on file with such banking or financial organization shall be sufficient to evidence such failure.

Source: Laws 1969, c. 611, § 2, p. 2479; Laws 1977, LB 305, § 1; Laws 1992, Third Spec. Sess., LB 26, § 4.

The State Board of Agriculture while operating parimutuel betting is a business association, as contemplated by the Uniform Disposition of Unclaimed Property Act. State ex rel. Marsh v. Nebraska St. Bd. of Agr., 217 Neb. 622, 350 N.W.2d 535 (1984).

69-1303 Unclaimed funds held and owing by a life insurance corporation; presumed abandoned; when.

(a) Unclaimed funds, as defined in this section, held and owing by a life insurance corporation shall be presumed abandoned if the last-known address, according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last-known address of the person entitled to the funds is the same as the last-known address of the insured or annuitant according to the records of the corporation.

(b) Unclaimed funds, as used in this section, means all money held and owing by any life insurance corporation unclaimed and unpaid for more than five years after the money became due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding five years, (1) assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan, or (2) corresponded in writing with the life insurance corporation concerning the policy. Money otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

Source: Laws 1969, c. 611, § 3, p. 2480; Laws 1977, LB 305, § 2; Laws 1992, Third Spec. Sess., LB 26, § 5.

69-1304 Funds held or owing by any utility; presumed abandoned; when.

The following funds held or owing by any utility are presumed abandoned:

(a) Any deposit made by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be furnished in this state, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than three years after the

termination of the services for which the deposit or advance payment was made.

(b) Any sum which a utility has been ordered to refund and which was received for utility services rendered in this state, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than three years after the date it became payable in accordance with the final determination or order providing for the refund.

Source: Laws 1969, c. 611, § 4, p. 2481; Laws 1977, LB 305, § 3; Laws 1992, Third Spec. Sess., LB 26, § 6.

69-1305 Stock, shareholding, or other intangible ownership interest; presumed abandoned; when.

(a) Any stock, shareholding, or other intangible ownership interest in a business association, the existence of which is evidenced by records available to the association, is presumed abandoned and, with respect to the interest, the association is the holder, if:

(1) The interest in the association is owned by a person who for more than five years has not claimed a dividend, distribution, or other sum payable as a result of the interest or has not communicated with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest, as evidenced by a memorandum or other record on file with the association prepared by an employee of the association; and

(2) The association does not know the location of the owner at the end of the five-year period.

(b) The return of official shareholder notifications or communications by the postal service as undeliverable shall be evidence that the association does not know the location of the owner.

(c) The Uniform Disposition of Unclaimed Property Act shall be applicable to both the underlying stock, shareholdings, or other intangible ownership interests of an owner, and any stock, shareholdings, or other intangible ownership interest of which the business association is in possession of the certificate or other evidence or indicia of ownership, and to the stock, shareholdings, or other intangible ownership interests of dividend- and non-dividend-paying business associations whether or not the interest is represented by a certificate.

Source: Laws 1969, c. 611, § 5, p. 2482; Laws 1986, LB 212, § 1; Laws 1992, Third Spec. Sess., LB 26, § 7; Laws 1994, LB 1048, § 1.

69-1305.01 Stock or other intangible ownership interest; applicability of act; conditions.

The Uniform Disposition of Unclaimed Property Act does not apply to any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions, or other sums payable as a result of the interest unless:

(a) The records available to the administrator of the plan show, with respect to any intangible ownership interest not enrolled in the reinvestment plan, that the owner has not within five years communicated in any manner described in subdivision (a)(1) of section 69-1305; or

(b) Five years have elapsed since the location of the owner became unknown to the business association as evidenced by the return of official shareholder notifications or communications by the postal service as undeliverable and the owner has not within those five years communicated in any manner described in subdivision (a)(1) of section 69-1305. The five-year period from the return of official shareholder notifications or communications shall commence from the return of the notification or communication.

Source: Laws 1994, LB 1048, § 2.

69-1305.02 Credit memo; presumed abandoned; when.

A credit memo that remains unredeemed for more than three years after issuance is presumed abandoned and the amount presumed abandoned is the amount credited, as shown on the memo itself.

Source: Laws 1994, LB 1048, § 3; Laws 2006, LB 173, § 2.

69-1305.03 Gift certificate or gift card; presumed abandoned; when.

(a) A gift certificate or gift card which is not assessed any fees and does not have an expiration date shall not be presumed to be abandoned.

(b) A gift certificate or gift card which contains an expiration date or requires any type of post-sale finance charge or fee which is unredeemed for a period of three years from the date of issuance shall be presumed abandoned.

(c) A gift certificate or gift card issued prior to November 2, 2006, which contains an expiration date or requires any type of post-sale finance charge or fee and has not been redeemed shall not be presumed abandoned if the issuer's policy and practice as of July 1, 2006, is to waive all post-sale charges or fees and to honor such gift certificate or gift card, at no additional cost to the holder whenever presented at full face value or the value remaining after any applicable purchases, expiration date notwithstanding. A written notice of such policy and practice shall be posted conspicuously by July 1, 2006, in not smaller than ten-point type, at each site in all Nebraska locations at which the issuer distributes or redeems a gift certificate or gift card.

(d) In the case of a gift certificate or gift card, the amount presumed abandoned is the face amount of the certificate or card itself, less the total amount of any applicable purchases and fees.

(e) A gift certificate or gift card subject to a fee shall contain a statement clearly and conspicuously printed on it stating whether there is a fee, the amount of the fee, how often the fee will occur, that the fee is triggered by inactivity of the gift certificate or gift card, and when the fee will be assessed. The statement may appear on the front or back of the gift certificate or gift card in a location where it is visible to a purchaser prior to the purchase.

(f) A gift certificate or gift card subject to an expiration date shall contain a statement clearly and conspicuously printed on the gift certificate or gift card stating the expiration date. The statement may appear on the front or back of the gift certificate or gift card in a location where it is visible to a purchaser prior to the purchase.

(g) This section does not apply to a general-use prepaid card.

Source: Laws 2006, LB 173, § 3; Laws 2008, LB668, § 1.

69-1306 Intangible personal property distributable in voluntary dissolution; presumed abandoned; when.

All intangible personal property distributable in the course of a voluntary dissolution of a business association, banking organization, or financial organization organized under the laws of or created in this state, that is unclaimed by the owner within two years after the date for distribution, is presumed abandoned.

Source: Laws 1969, c. 611, § 6, p. 2482; Laws 1992, Third Spec. Sess., LB 26, § 8.

69-1307 Intangible personal property and increment held in a fiduciary capacity; presumed abandoned; when.

All intangible personal property and any income or increment thereon, held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within five years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary:

(a) If the property is held by a banking organization or a financial organization, or by a business association organized under the laws of or created in this state; or

(b) If it is held by a business association, doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last-known address of the person entitled thereto is in this state; or

(c) If it is held in this state by any other person.

Source: Laws 1969, c. 611, § 7, p. 2482; Laws 1992, Third Spec. Sess., LB 26, § 9.

69-1307.01 Intangible personal property held by court, public entities, or political subdivision; presumed abandoned; when.

Except as otherwise provided by law, all intangible personal property held for the owner by any court, public corporation, public authority, or public officer of this state, or a political subdivision thereof, that has remained unclaimed by the owner for more than three years is presumed abandoned.

Source: Laws 1992, Third Spec. Sess., LB 26, § 10.

69-1307.02 Unpaid wages; presumed abandoned; when.

Unpaid wages, including wages represented by payroll checks owing in the ordinary course of the holder's business which remain unclaimed by the owner for more than one year after becoming payable, are presumed abandoned.

Source: Laws 1992, Third Spec. Sess., LB 26, § 11.

69-1307.03 Retirement funds; presumed abandoned; when.

All intangible property and any income or increment derived therefrom held in an individual retirement account, a retirement plan for self-employed individuals, or similar account or plan established pursuant to the internal revenue laws of the United States, which has not been paid or distributed for more than

thirty days after the earliest of the following: (a) The actual date of distribution or attempted distribution; (b) the date contracted for distribution in the plan or trust agreement governing the account or plan; or (c) the date specified in the internal revenue law of the United States by which distribution must begin in order to avoid a tax penalty, is presumed abandoned unless the owner or beneficiary within the five years preceding any such date has made additional payments or transfers of property to the account or plan, was paid or received a distribution, communicated concerning the property, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the account or plan fiduciary.

Source: Laws 1994, LB 1048, § 4.

69-1307.04 Mineral rights and proceeds; presumed abandoned; when.

(a) For purposes of this section, unless the context otherwise requires:

(1) Mineral means oil, gas, uranium, sulphur, lignite, coal, and any other substance that is ordinarily and naturally considered a mineral, regardless of the depth at which the oil, gas, uranium, sulphur, lignite, coal, or other substance is found; and

(2) Mineral proceeds includes:

(i) All obligations to pay resulting from the production and sale of minerals, including net revenue interest, royalties, overriding royalties, production payments, and joint operating agreements; and

(ii) All obligations for the acquisition and retention of a mineral lease, including bonuses, delay rentals, shut-in royalties, and minimum royalties.

(b) Any sum payable as mineral proceeds and the underlying right to receive mineral proceeds are presumed abandoned if any sum payable as mineral rights has remained unclaimed by the owner for more than three years after it became payable or distributable. At the time an owner's underlying right to receive mineral proceeds is presumed abandoned, any mineral proceeds then owing to the owner and any proceeds accruing after that time are presumed abandoned.

(c) A holder may not deduct any amount from mineral proceeds unless:

(1) There is an enforceable written contract between the holder and the owner of the mineral proceeds pursuant to which the holder may impose a charge;

(2) For mineral proceeds in excess of five dollars, the holder, no more than three months before the initial imposition of those charges, has mailed written notice to the owner of the amount of those charges at the last-known address of the owner stating that those charges will be imposed, but the notice provided in this section need not be given with respect to charges imposed before July 16, 1994; and

(3) The holder regularly imposes such charges and in no instance reverses or otherwise cancels them.

(d) Charges imposed pursuant to subsection (c) of this section may be made and collected monthly, quarterly, or annually. However, beginning with July 16, 1994, the cumulative amount of charges shall not exceed twelve dollars per year, and shall only be charged for a maximum of two calendar years.

Source: Laws 1994, LB 1048, § 5.

69-1307.05 Intangible personal property held by life insurance corporation; presumed abandoned; when.

All intangible personal property distributable in the course of a demutualization or related reorganization of a life insurance corporation that remains unclaimed is presumed abandoned two years after the date of the distribution of the property.

Source: Laws 2003, LB 424, § 2.

69-1307.06 Military medal; report and delivery to State Treasurer.

Any military medal that is removed from a safe deposit box or any other safekeeping repository or agency or collateral deposit box on which the lease or rental period has expired due to nonpayment of rental charges or other reasons shall not be sold or otherwise disposed of but shall be retained by the holder for the lessee of the box until reported and delivered to the State Treasurer in accordance with this section. Such report shall be made in compliance with section 69-1310. The holder shall, at the time of filing the report and with the report, deliver the military medal to the State Treasurer for safekeeping by the State Treasurer in accordance with section 69-1307.07.

Source: Laws 2012, LB819, § 2.

69-1307.07 Military medals; State Treasurer; duties.

The State Treasurer, upon receiving military medals, shall hold and maintain the military medals for ten years or until the original owner or the owners' respective heirs or beneficiaries can be identified and the military medals returned. After ten years, the State Treasurer may designate a veteran's organization, an awarding agency, or a governmental entity as the custodian of the military medals. Once the military medals are turned over to a veteran's organization, an awarding agency, or a governmental entity, the State Treasurer will no longer be responsible for the safekeeping of the military medals.

Source: Laws 2012, LB819, § 3.

69-1308 Other intangible property; general-use prepaid card; presumed abandoned; when.

(a) Except as provided in subsection (b) of this section, all intangible personal property, not otherwise covered by the Uniform Disposition of Unclaimed Property Act, including any income or increment thereon after deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than five years after it became payable or distributable, is presumed abandoned.

(b) The unredeemed value of a general-use prepaid card, including any income or increment thereon after deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than five years after the last transaction initiated by the card owner, is presumed abandoned.

Source: Laws 1969, c. 611, § 8, p. 2483; Laws 1992, Third Spec. Sess., LB 26, § 12; Laws 2006, LB 173, § 4.

69-1309 Owner in another state; property not presumed abandoned; when.

If specific property which is subject to the provisions of sections 69-1302 and 69-1305 to 69-1308 is held for or owed or distributable to an owner whose last-known address is in another state by a holder who is subjected to the jurisdiction of that state, the specific property is not presumed abandoned in this state and subject to sections 69-1301 to 69-1329 if:

(a) It may be claimed as abandoned or escheated under the laws of such other state; and

(b) The laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or distributable to an owner whose last-known address is within this state by a holder who is subject to the jurisdiction of this state.

Source: Laws 1969, c. 611, § 9, p. 2483.

69-1310 Property presumed abandoned; reports to State Treasurer; contents; filing date; property accompany report; prevent abandonment, when; verification.

(a) Every person holding funds or other property, tangible or intangible, presumed abandoned under the Uniform Disposition of Unclaimed Property Act shall report to the State Treasurer with respect to the property as hereinafter provided.

(b) The report shall be verified and shall include:

(1) Except with respect to traveler's checks and money orders, the name, if known, and last-known address, if any, of each person appearing from the records of the holder to be the owner of any property presumed abandoned under the act;

(2) In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and his or her last-known address according to the life insurance corporation's records;

(3) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of less than twenty-five dollars may be reported in the aggregate;

(4) The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

(5) Other information which the State Treasurer may prescribe by rule as necessary for the administration of the act.

(c) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his or her name while holding the property, he or she shall file with his or her report all prior known names and addresses of each holder of the property.

(d) The report shall be filed before November 1 of each year as of June 30 next preceding, but the report of life insurance corporations shall be filed before May 1 of each year as of December 31 next preceding. A one-time supplemental report shall be filed by life insurance corporations with regard to property subject to section 69-1307.05 before November 1, 2003, as of December 31, 2002, as if section 69-1307.05 had been in effect before January 1, 2003. The property must accompany the report unless excused by the State Treasurer

for good cause. The State Treasurer may postpone the reporting date upon written request by any person required to file a report.

(e) If the holder of property presumed abandoned under the act knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. The holder shall exercise due diligence to ascertain the whereabouts of the owner.

(f) Verification, if made by a partnership, shall be executed by a partner; if made by a limited liability company, by a member; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

Source: Laws 1969, c. 611, § 10, p. 2483; Laws 1977, LB 305, § 4; Laws 1992, Third Spec. Sess., LB 26, § 13; Laws 1993, LB 121, § 415; Laws 1994, LB 1048, § 6; Laws 2003, LB 424, § 3.

69-1311 Report of property presumed abandoned; notices; time; contents; exceptions.

(a) Between March 1 and March 10 of each year the State Treasurer shall cause notice to be published once in an English language legal newspaper of general circulation in the county in this state in which is located the last-known address of any person to be named in the notice. If no address is known, then the notice shall be published in a legal newspaper having statewide circulation.

(b) The published notice shall be entitled Notice to Owners of Abandoned Property, and shall contain:

(1) The names in alphabetical order and counties of last-known addresses, if any, of persons listed in the report and entitled to notice as provided in subsection (a) of this section.

(2) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any person possessing an interest in the property by addressing an inquiry to the State Treasurer.

(c) The State Treasurer is not required to publish in such notice any item of less than twenty-five dollars unless he or she deems such publication to be in the public interest.

(d) Within one hundred twenty days from the receipt of the report required by section 69-1310, the State Treasurer shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of twenty-five dollars or more presumed abandoned under the Uniform Disposition of Unclaimed Property Act.

(e) The mailed notice shall contain:

(1) A statement that, according to a report filed with the State Treasurer, property is being held to which the addressee appears entitled.

(2) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

(3) A statement that, if satisfactory proof of claim is presented by the owner to the State Treasurer, arrangements will be made to transfer the property to the owner as provided by law.

(f) This section is not applicable to sums payable on traveler's checks or money orders presumed abandoned under section 69-1302.

Source: Laws 1969, c. 611, § 11, p. 2485; Laws 1971, LB 648, § 1; Laws 1977, LB 305, § 5; Laws 2005, LB 476, § 1.

69-1312 Delivery of property to State Treasurer; exceptions.

Every person who has filed a report under section 69-1310, or in the case of sums payable on traveler's checks or money orders presumed abandoned under section 69-1302, shall pay or deliver to the State Treasurer all abandoned property specified in this report, except that, if the owner establishes his right to receive the abandoned property to the satisfaction of the holder within the time specified in section 69-1311, or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the State Treasurer, but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

Source: Laws 1969, c. 611, § 12, p. 2486; Laws 1977, LB 305, § 6.

69-1313 Property; delivery to State Treasurer; custodian; holder relieved of liability; reimbursement.

Upon the payment or delivery of abandoned property to the State Treasurer or upon payment or delivery of property to the State Treasurer pursuant to section 69-1321, the state shall assume custody and shall be responsible for the safekeeping thereof. Any person who pays or delivers abandoned property to the State Treasurer under the Uniform Disposition of Unclaimed Property Act or who pays or delivers property to the State Treasurer pursuant to section 69-1321 is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property. Any holder who has paid money to the State Treasurer pursuant to the act may make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee was entitled thereto, the State Treasurer shall forthwith reimburse the holder for the payment.

Source: Laws 1969, c. 611, § 13, p. 2487; Laws 1992, Third Spec. Sess., LB 26, § 14.

Cross References

State Treasurer, credit to the State Treasurer Administrative Fund, see section 84-617.

69-1314 Property paid or delivered to State Treasurer; owner not entitled to income.

When property is paid or delivered to the State Treasurer under sections 69-1301 to 69-1329, the owner is not entitled to receive income or other increments accruing thereafter.

Source: Laws 1969, c. 611, § 14, p. 2487.

69-1315 Limitation of action; claim; effect.

(a) The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent

the money or property from being presumed abandoned property, nor affect any duty to file a report required by the Uniform Disposition of Unclaimed Property Act or to pay or deliver abandoned property to the State Treasurer. Holders shall not be required to report or to pay or to deliver abandoned property or unclaimed funds as to which the statute of limitations applicable to the enforcement of any claim to such property shall have expired prior to December 25, 1969.

(b) No action or proceeding may be commenced by the State Treasurer with respect to any duty of a holder under the act more than seven years after the holder files a report for the period in which the duty arose. This subsection shall not apply to holders described in section 69-1307.01.

Source: Laws 1969, c. 611, § 15, p. 2487; Laws 1992, Third Spec. Sess., LB 26, § 15.

69-1316 Abandoned property; State Treasurer; sell; when; notice; title.

(a) Except as provided in section 69-1321, all abandoned property other than money, securities, bonds, or similar property delivered to the State Treasurer under the Uniform Disposition of Unclaimed Property Act shall be sold by him or her to the highest bidder at public sale in whatever city in the state affords in his or her judgment the most favorable market for the property involved. The State Treasurer shall hold the sale whenever he or she decides, but a sale must be conducted at least once every five years. The State Treasurer may decline the highest bid and reoffer the property for sale if he or she considers the price bid insufficient. He or she need not offer any property for sale if, in his or her opinion, the probable cost of sale exceeds the value of the property.

(b) Any sale held under this section shall be preceded by a single publication of notice thereof, at least three weeks in advance of sale in an English language newspaper of general circulation in the county where the property is to be sold.

(c) The purchaser at any sale conducted by the State Treasurer pursuant to the act shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The State Treasurer shall execute all documents necessary to complete the transfer of title.

(d) Securities listed on an established stock exchange shall be sold at the prevailing prices on the exchange. Other securities may be sold over the counter at prevailing prices or by another commercially reasonable method. All securities presumed abandoned under the act and delivered to the State Treasurer shall be held for at least three years before he or she sells them. A person making a claim under this section is entitled to receive either the securities delivered to the State Treasurer by the holder, if they still remain in the hands of the State Treasurer, or the proceeds received from the sale, but no person has any claim under this section against the state, the holder, any transfer agent, any registrar, or any other person acting for or on behalf of a holder for any appreciation in the value of the property occurring after delivery by the holder to the State Treasurer.

Source: Laws 1969, c. 611, § 16, p. 2487; Laws 1992, Third Spec. Sess., LB 26, § 16; Laws 1994, LB 1048, § 7.

69-1317 Abandoned property; trust funds; record; professional finder's fee; information withheld; when; proceeds of sale; transfers; Unclaimed Property Cash Fund; created; investment.

(a)(1) Except as otherwise provided in this subdivision, all funds received under the Uniform Disposition of Unclaimed Property Act, including the proceeds from the sale of abandoned property under section 69-1316, shall be deposited by the State Treasurer in a separate trust fund from which he or she shall make prompt payment of claims allowed pursuant to the act and payment of any auditing expenses associated with the receipt of abandoned property. All funds received under section 69-1307.05 shall be deposited by the State Treasurer in a separate life insurance corporation demutualization trust fund, which is hereby created, from which he or she shall make prompt payment of claims regarding such funds allowed pursuant to the act. Transfers from the separate life insurance corporation demutualization trust fund to the General Fund may be made at the direction of the Legislature. Before making the deposit he or she shall record the name and last-known address of each person appearing from the holders' reports to be entitled to the abandoned property, the name and last-known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection during business hours.

The record shall not be subject to public inspection or available for copying, reproduction, or scrutiny by commercial or professional locators of property presumed abandoned who charge any service or finders' fee until twenty-four months after the names from the holders' reports have been published or officially disclosed. Records concerning the social security number, date of birth, and last-known address of an owner shall be treated as confidential and subject to the same confidentiality as tax return information held by the Department of Revenue, except that the Auditor of Public Accounts shall have unrestricted access to such records.

A professional finders' fee shall be limited to ten percent of the total dollar amount of the property presumed abandoned. To claim any such fee, the finder shall disclose to the owner the nature, location, and value of the property, provide notice of when such property was reported to the State Treasurer, and provide notice that the property may be claimed by the owner from the State Treasurer free of charge. To claim any such fee if the property has not yet been abandoned, the finder shall disclose to the owner the nature, location, and value of the property, provide notice of when such property will be reported to the State Treasurer, if known, and provide notice that, upon receipt of the property by the State Treasurer, such property may be claimed by the owner from the State Treasurer free of charge.

(2) The unclaimed property records of the State Treasurer, the unclaimed property reports of holders, and the information derived by an unclaimed property examination or audit of the records of a person or otherwise obtained by or communicated to the State Treasurer may be withheld from the public. Any record or information that may be withheld under the laws of this state or of the United States when in the possession of such a person may be withheld when revealed or delivered to the State Treasurer. Any record or information that is withheld under any law of another state when in the possession of that

other state may be withheld when revealed or delivered by the other state to the State Treasurer.

Information withheld from the general public concerning any aspect of unclaimed property shall only be disclosed to an apparent owner of the property or to the escheat, unclaimed, or abandoned property administrators or officials of another state if that other state accords substantially reciprocal privileges to the State Treasurer.

(b)(1) On or after October 6, 1992, the State Treasurer shall periodically transfer any balance in excess of an amount not to exceed five hundred thousand dollars from the separate trust fund to the General Fund no less frequently than on or before November 1 and May 1 of each year, except that the total amount of all such transfers shall not exceed five million dollars.

(2) On or before November 1 of each year, the State Treasurer shall transfer any balance in excess of an amount not to exceed five hundred thousand dollars from the separate trust fund to the permanent school fund.

(c) Before making any deposit to the credit of the permanent school fund or the General Fund, the State Treasurer may deduct (1) any costs in connection with sale of abandoned property, (2) any costs of mailing and publication in connection with any abandoned property, and (3) reasonable service charges and place such funds in the Unclaimed Property Cash Fund which is hereby created. Transfers from the fund to the General Fund may be made at the direction of the Legislature. Any money in the Unclaimed Property Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1969, c. 611, § 17, p. 2488; Laws 1971, LB 648, § 2; Laws 1977, LB 305, § 7; Laws 1978, LB 754, § 1; Laws 1986, LB 212, § 2; Laws 1992, Third Spec. Sess., LB 26, § 17; Laws 1994, LB 1048, § 8; Laws 1994, LB 1049, § 1; Laws 1994, LB 1066, § 63; Laws 1995, LB 7, § 67; Laws 1997, LB 57, § 1; Laws 2003, LB 424, § 4; Laws 2009, LB432, § 1; Laws 2012, LB1026, § 1.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

69-1318 Person claiming interest in property delivered to state; claim; filing.

Any person claiming an interest in any property delivered to the state under sections 24-345, and 69-1301 to 69-1329 may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the State Treasurer.

Source: Laws 1969, c. 611, § 18, p. 2489; Laws 1980, LB 572, § 3.

69-1318.01 Payment with respect to support order obligor authorized.

The State Treasurer may make payment on a claim filed under the Uniform Disposition of Unclaimed Property Act by a person who is not the owner of the property, or by a legal representative of such person, when the owner is an obligor, as defined in section 43-3341, and the person filing the claim is an obligee, as defined in such section. Such payments shall only be made to credit an arrearage of an obligor.

Source: Laws 2006, LB 771, § 1.

69-1319 Claim; hearing; decision; payment.

(a) The State Treasurer shall consider any claim filed under sections 69-1301 to 69-1329 and may hold a hearing and receive evidence concerning it. If a hearing is held he shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by him and the reasons for his decision. The decision shall be a public record.

(b) If the claim is allowed, the State Treasurer shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges.

Source: Laws 1969, c. 611, § 19, p. 2489.

69-1320 Claim; appeal; procedure.

Any person aggrieved by a decision of the State Treasurer or as to whose claim the State Treasurer has failed to act within ninety days after the filing of the claim may appeal, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1969, c. 611, § 20, p. 2489; Laws 1988, LB 352, § 110.

Cross References

Administrative Procedure Act, see section 84-920.

69-1321 Abandoned property; State Treasurer; decline to accept; when; other payments or delivery authorized.

(a) The State Treasurer, after receiving reports of property deemed abandoned pursuant to the Uniform Disposition of Unclaimed Property Act, may decline to receive any property reported which he or she deems to have a value less than the cost of giving notice and holding sale, or he or she may, if he or she deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates. Unless the holder of the property is notified to the contrary within one hundred twenty days after filing the report required under section 69-1310, the State Treasurer shall be deemed to have elected to receive the custody of the property.

(b) A holder may pay or deliver property before the property is presumed abandoned with written consent of the State Treasurer and upon conditions and terms prescribed by the State Treasurer. Property paid or delivered under this subsection shall be held by the State Treasurer and is not presumed abandoned until such time as it otherwise would be presumed abandoned under the act.

Source: Laws 1969, c. 611, § 21, p. 2489; Laws 1992, Third Spec. Sess., LB 26, § 18.

69-1322 Failure to report property; State Treasurer; powers and duties; holder; duties.

(a) If the State Treasurer has reason to believe that any person has failed to report property in accordance with the Uniform Disposition of Unclaimed Property Act, the State Treasurer may demand that such person file a verified report or otherwise comply with the act within thirty days of the demand.

(b) The State Treasurer may at reasonable times and upon reasonable notice examine the records of any person if he or she has reason to believe that such

person has failed to report property that should have been reported pursuant to the act.

(c) If an examination of the records of a person results in the disclosure of property reportable under the act, the State Treasurer may assess the cost of the examination against the holder but in no case may the charges exceed the value of the property found to be reportable.

(d)(1) Every holder required to file a report under section 69-1310, as to any property for which it has obtained the last-known address of the owner, shall maintain a record of the name and last-known address of the owner for seven years after the property becomes reportable, except to the extent that a shorter time is provided in subdivision (2) of this subsection or by rule of the State Treasurer.

(2) Any holder that sells in this state its travelers checks, money orders, or other similar written instruments on which the holder is directly liable, or that provides such instruments to others for sale in this state, shall maintain a record of those instruments while they remain outstanding, indicating the state and date of issue for three years after the date the property is reportable.

Source: Laws 1969, c. 611, § 22, p. 2489; Laws 1992, Third Spec. Sess., LB 26, § 19.

69-1323 Refusal to deliver property; action to enforce delivery.

If any person refuses to deliver property to the State Treasurer as required under sections 69-1301 to 69-1329, he shall bring an action in a court of appropriate jurisdiction to enforce such delivery.

Source: Laws 1969, c. 611, § 23, p. 2490.

69-1324 Failing to render report or refusing to pay or deliver property; penalty.

(a) A person who fails to pay or deliver property within the time prescribed by the Uniform Disposition of Unclaimed Property Act shall be required to pay to the State Treasurer interest calculated pursuant to section 45-103 as such section was in effect on the date the property should have been paid or delivered on the value of the property from the date the property should have been paid or delivered.

(b) A person who willfully fails to render any report or perform other duties required under the act shall pay a civil penalty of one hundred dollars for each day the report is withheld or the duty is not performed, but not more than five thousand dollars.

(c) A person who willfully fails to pay or deliver property to the State Treasurer as required under the act shall pay a civil penalty equal to twenty-five percent of the value of the property that should have been paid or delivered.

(d) The interest or penalty or any portion thereof as imposed by subsections (a), (b), or (c) of this section may be waived or remitted by the State Treasurer for good cause shown.

(e) Any person who willfully refuses to pay or deliver abandoned property to the State Treasurer as required under the act shall be guilty of a Class II misdemeanor.

Source: Laws 1969, c. 611, § 24, p. 2490; Laws 1977, LB 39, § 135; Laws 1992, Third Spec. Sess., LB 26, § 20.

69-1325 State Treasurer; rules and regulations; adopt.

The State Treasurer is hereby authorized to make necessary rules and regulations to carry out the provisions of sections 69-1301 to 69-1329.

Source: Laws 1969, c. 611, § 25, p. 2490.

69-1326 Property exempt from act.

Sections 69-1301 to 69-1329 shall not apply to any property that has been presumed abandoned or escheated under the laws of another state prior to December 25, 1969.

Source: Laws 1969, c. 611, § 26, p. 2490; Laws 1978, LB 859, § 1.

69-1327 Act, severability.

If any provision of sections 69-1301 to 69-1329 or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of sections 69-1301 to 69-1329 are severable.

Source: Laws 1969, c. 611, § 27, p. 2490.

69-1328 Act, how construed.

Sections 69-1301 to 69-1329 shall be so construed as to effectuate their general purpose to make uniform the law of those states which enact them.

Source: Laws 1969, c. 611, § 28, p. 2490.

69-1329 Act, how cited.

Sections 69-1301 to 69-1329 shall be known and may be cited as the Uniform Disposition of Unclaimed Property Act.

Source: Laws 1969, c. 611, § 29, p. 2490; Laws 1992, Third Spec. Sess., LB 26, § 21; Laws 1994, LB 1048, § 9; Laws 2003, LB 424, § 5; Laws 2006, LB 173, § 5; Laws 2006, LB 771, § 2; Laws 2012, LB819, § 4.

(b) PROPERTY IN POSSESSION OF COUNTY SHERIFF**69-1330 Certain unclaimed property; disposition.**

Any property that shall come into the possession of the county sheriff of any county by virtue of his or her office, the disposition of which is not otherwise provided for by law, and which appears to be abandoned or unclaimed, may be sold at auction or disposed of as provided in sections 69-1330 to 69-1332.

Source: Laws 1981, LB 280, § 1.

69-1331 Unclaimed property; sale; disposal; procedure.

If the property described in section 69-1330 shall remain unclaimed for a period of not less than one hundred eighty days, the county sheriff may sell such property at auction. Prior to such sale the county sheriff shall cause a list of all property subject to sale to be published once a week for three consecutive weeks in a newspaper of general circulation in the county in which he or she holds office. If such property is not bid upon at sale, or the county sheriff

reasonably believes that such property has little or no sale value, he or she may dispose of such property. Before the county sheriff may dispose of such property he or she shall submit a plan for disposing of such property to the county board for its approval. Upon the approval of the board, the county sheriff may dispose of such property in the manner approved and shall be exempt from any civil liability for such action.

Source: Laws 1981, LB 280, § 2.

69-1332 Unclaimed property; sale proceeds; disposition.

The county sheriff shall pay over to the county treasurer the proceeds of any sale authorized by sections 69-1330 to 69-1332, less the reasonable expenses of such sale. The county treasurer shall hold such proceeds for a period of two years from the date of sale. If at the end of such period no person has presented a lawful claim to the proceeds of such sale, the county treasurer shall deposit such proceeds, including any interest thereon, to the general fund of the county and any claims thereon shall be extinguished.

Source: Laws 1981, LB 280, § 3.

ARTICLE 14

REFERRAL SALES AND LEASES

Section

- 69-1401. Repealed. Laws 1974, LB 327, § 16.
- 69-1402. Repealed. Laws 1974, LB 327, § 16.

69-1401 Repealed. Laws 1974, LB 327, § 16.

69-1402 Repealed. Laws 1974, LB 327, § 16.

ARTICLE 15

RETAIL FARM IMPLEMENTS

Section

- 69-1501. Retailer; contract; termination; reimbursement for implements, machinery, and parts.
- 69-1502. Prices for implements, machinery, and parts; how determined.
- 69-1503. Manufacturer, wholesaler, or distributor; failure to furnish or make payment; liability; damages.
- 69-1504. Retail dealer; majority stockholder; death; settlement with heirs.

69-1501 Retailer; contract; termination; reimbursement for implements, machinery, and parts.

Whenever any person, firm, or corporation engaged in the business of selling and retailing farm implements and repair parts for farm implements enters into a written contract evidenced by a franchised agreement whereby such retailer agrees to maintain a stock of parts or complete or whole machines or attachments with any wholesaler, manufacturer, or distributor of farm implements or machinery or repair parts therefor and either such wholesaler, manufacturer, or distributor or the retailer desires to cancel or discontinue the contract, such wholesaler, manufacturer, or distributor shall pay to such retailer, unless the retailer desires to keep such merchandise, a sum equal to one hundred percent of the net cost of all new unused complete farm implements, machinery, and

attachments, including transportation charges which have been paid by such retailer, and eighty-five percent of the current net prices on repair parts, including superseded parts, listed in a current price list or catalog which parts had previously been purchased from such wholesaler, manufacturer, or distributor and held by such retailer on the date of the cancellation or discontinuance of such contract. Such sums shall be due within sixty days of receipt of such farm implements, machinery, or attachments or repair parts therefor by such wholesaler, manufacturer, or distributor from such retailer. An interest rate of fourteen percent per annum shall be assessed on such sums which are delinquent. The wholesaler, manufacturer, or distributor shall also pay such retailer a sum equal to five percent of the current net price of all parts returned for the handling, packing, and loading of such parts for return to the wholesaler, manufacturer, or distributor. Upon the payment of the sum equal to one hundred percent of the net cost of such farm implements, machinery, and attachments, plus transportation charges, and eighty-five percent of the current net prices on repair parts, plus five percent handling, packing, and loading costs on repair parts only, plus freight charges which have been paid by the retailer, the title to such farm implements, farm machinery, and repair parts, or parts therefor, shall pass to the manufacturer, wholesaler, or distributor making such payment and such manufacturer, wholesaler, or distributor shall be entitled to the possession of such farm implements or repair parts therefor.

The provisions of this section relating to a retailer's right to cancel or discontinue a contract and receive payment for machines, attachments, and parts returned shall apply to all contracts entered into or renewed after July 1, 1971, but before May 2, 1991, which have expiration dates, except that the provisions for a retailer to receive payment for machines, attachments, and parts returned shall apply only to machines, attachments, and parts purchased after August 27, 1971. Any contract in force and effect on July 1, 1971, which by its own terms will terminate on a date subsequent thereto shall be governed by the law as it existed prior to August 27, 1971. Sections 69-1501 to 69-1504 shall not apply to any contract to which the Equipment Business Regulation Act applies.

Source: Laws 1971, LB 699, § 1; Laws 1988, LB 826, § 1; Laws 1991, LB 123, § 12.

Cross References

Equipment Business Regulation Act, see section 87-701.

69-1502 Prices for implements, machinery, and parts; how determined.

The prices of farm implements, machinery, and repair parts therefor, required to be paid to any retail dealer as provided in section 69-1501, shall be determined by taking one hundred percent of the net cost on farm implements, machinery, and attachments, and eighty-five percent of the current net price of repair parts therefor as shown upon the manufacturer's, wholesaler's or distributor's price lists or catalogs in effect at the time such contract is canceled or discontinued.

Source: Laws 1971, LB 699, § 2.

69-1503 Manufacturer, wholesaler, or distributor; failure to furnish or make payment; liability; damages.

In the event that any manufacturer, wholesaler, or distributor of farm machinery, farm implements, and repair parts for farm machinery and farm implements, or of repair parts therefor, upon cancellation of a contract by either a retailer or a manufacturer, wholesaler, or distributor, fails or refuses to make payment to such dealer as required by section 69-1501, or refuses to supply farm machinery, farm implements, and repair parts for farm machinery and farm implements, or repair parts therefor, to any retailer of such products who may have a retail sales contract with such manufacturer, wholesaler, or distributor dated after July 1, 1971, but before May 2, 1991, which has an expiration date, such manufacturer, wholesaler, or distributor shall be liable in a civil action to be brought by such retailer for one hundred percent of the net cost of such farm implements, machinery, and attachments, plus transportation charges which have been paid by the retailer and eighty-five percent of the current net price of repair parts, plus five percent for handling, packing, and loading plus freight charges which have been paid by the retailer.

Source: Laws 1971, LB 699, § 3; Laws 1991, LB 123, § 13.

69-1504 Retail dealer; majority stockholder; death; settlement with heirs.

In the event of the death of the retail dealer or majority stockholder in a corporation operating a retail dealership in the business of selling and retailing farm implements or repair parts for farm implements, the wholesaler, distributor, or manufacturer who supplied such merchandise shall repurchase from the heir or heirs of such retail dealer or majority stockholder such merchandise at a sum equal to one hundred percent of the net cost of all current unused complete farm implements including transportation charges which have been paid by such retailer, and eighty-five percent of the current net prices on repair parts, including superseded parts, listed in current price lists or catalogs, plus a sum equal to five percent of the current net price of all parts returned for handling, packing, and loading of such parts, unless such heir or heirs agree to continue to operate such retail dealership. In the event such heir or heirs do not agree to continue to operate such retail dealership, it shall be deemed a cancellation or discontinuance of contract by the retailer under the provisions of section 69-1501, and as such the heir or heirs may exercise any rights and privileges under the provisions of sections 69-1501 to 69-1504.

Source: Laws 1971, LB 699, § 4.

ARTICLE 16

HOME SOLICITATION SALES

Cross References

Unsolicited goods or merchandise, by mail, see section 69-2201.

Section

- 69-1601. Terms, defined.
- 69-1602. Disclosure obligations.
- 69-1603. Right to cancel; manner of cancellation.
- 69-1604. Notice of right to cancel; form; foreign language; when delivered; time; exception.
- 69-1605. Cancellation, effect.
- 69-1606. Duty of buyer; failure of seller to take possession; performance of service, how treated.
- 69-1607. Sale made in violation of sections; buyer recovery.

69-1601 Terms, defined.

For purposes of sections 69-1601 to 69-1607, unless the context otherwise requires:

(1) Home solicitation sale shall mean a sale, lease, or rental of consumer goods or services with a purchase price of twenty-five dollars or more, whether under a single or multiple contract, in which the seller or his or her representative personally solicits the sale, including those in response to or following the invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller. The term home solicitation sale shall not include a transaction:

(a) Made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis;

(b) In which the consumer is accorded the right to rescission by the provisions of the Consumer Credit Protection Act, 15 U.S.C. 1635 et seq., or regulations issued pursuant thereto;

(c) In which the buyer has initiated the contact, the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three business days;

(d) Conducted and consummated entirely by mail or telephone and without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services;

(e) In which the buyer has initiated the contact and specifically requested the seller to visit his or her home for the purpose of repairing or performing maintenance upon the buyer's personal property. If, in the course of such a visit, the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of such additional goods or services shall not fall within this exclusion;

(f) Pertaining to the sale of securities or commodities by a broker-dealer registered with the Securities and Exchange Commission; or

(g) Defined as a consumer rental purchase agreement in the Consumer Rental Purchase Agreement Act;

(2) Buyer shall mean both actual and prospective purchasers or lessees of any goods or services offered through home solicitation selling; and

(3) Seller shall mean a person or organization who advertises, offers, or deals in goods or services for the purpose of home solicitation selling or provides or exercises supervision, direction, or control over sales practices used in the home solicitation sale but shall not include banks, savings and loan associations, insurance companies, public utilities, licensed motor vehicle dealers, or licensed real estate brokers or salespersons with respect to real estate listings or the sale or leasing of real estate, but seller shall include a supplier or distributor if:

(a) The seller is a subsidiary or affiliate of the supplier or distributor;

(b) The seller interchanges personnel or maintains common or overlapping officers or directors with the supplier or distributor; or

(c) The supplier or distributor provides or exercises supervision, direction, or control over the selling practices of the seller.

Source: Laws 1974, LB 212, § 1; Laws 1989, LB 681, § 17.

Cross References

Consumer Rental Purchase Agreement Act, see section 69-2101.

69-1602 Disclosure obligations.

In a home solicitation sale the seller shall, at the outset, clearly and expressly disclose the seller's individual name, the name of the business firm or organization he represents, and the identity or kind of goods or services he offers to sell.

Source: Laws 1974, LB 212, § 2.

69-1603 Right to cancel; manner of cancellation.

(1) In addition to any right otherwise to revoke an offer, to rescind the transaction or to exercise any remedy for the seller's breach, a buyer may cancel a home solicitation sale until midnight of the third business day after the seller has given notice to the buyer in accordance with section 69-1604.

(2) Notice of cancellation shall be by mail addressed to the seller and shall be considered given at the time mailed.

(3) Notice of cancellation by the buyer need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by such home solicitation sale.

Source: Laws 1974, LB 212, § 3.

For the purposes of this section, "business day" is defined as any calendar day except Sunday or any federal holiday. *Flodman v. Robinson*, 22 Neb. App. 943, 864 N.W.2d 716 (2015).

69-1604 Notice of right to cancel; form; foreign language; when delivered; time; exception.

(1) Whenever a buyer has the right to cancel a home solicitation sale, the seller's contract shall contain a notice to be printed in capital and lowercase letters of not less than ten-point boldface type and appear under the conspicuous caption: BUYER'S RIGHT TO CANCEL; which shall read as follows: You may cancel this agreement by mailing a written notice to (Insert name and mailing address of seller) before midnight of the third business day after you signed this agreement. If you wish, you may use this page as that notice by writing "I hereby cancel" and adding your name and address.

(2) A home solicitation sales contract which contains the Notice of Cancellation form and content provided in the Federal Trade Commission's trade regulation rule providing a cooling-off period shall be deemed as complying with the requirements of subsection (1) of this section, so long as the Federal Trade Commission language provides at least equal information to the consumer concerning his right to cancel as is required by sections 69-1601 to 69-1607.

(3) A seller who in the ordinary course of business regularly uses a language other than English in any advertising or other solicitation of customers or in any printed forms for use by buyers or in any face-to-face negotiations with buyers, shall give the notice described in this section to a buyer whose principal language is such other language, both in English and in the other language.

(4) The notice required under this section shall be delivered either after all the credit cost disclosures have been made to the buyer as required by the federal Consumer Credit Protection Act and the buyer has signed the writing evidencing the transaction, or contemporaneously therewith, but not before.

(5) Until the seller has complied with this section the buyer may cancel the home solicitation sale by notifying the seller in any manner and by any means of his intention to cancel. The three-business-day period prescribed by sections 69-1601 to 69-1607 shall begin to run from the time the seller complies with this section.

(6) The notice provisions under this section shall not be required in a transaction involving an order for goods to be delivered at one time if: (a) The order is evidenced only by a sales ticket or invoice, a copy of which must be provided to the buyer, which clearly and unmistakably sets forth on the face or reverse side of the sales ticket or invoice the buyer's right to cancel the order, refuse delivery or return the goods without obligation or charge; (b) the goods are not delivered within three business days of the date of the order; and (c) the buyer may refuse to accept the goods when they are delivered without incurring any obligation to pay for them or the expenses associated with the transaction, including mailing or shipping charges, or the buyer may, upon inspecting the goods after delivery, return them within three business days to the seller and receive a full refund for any amounts the buyer has paid including mailing and shipping charges.

Source: Laws 1974, LB 212, § 4.

A buyer may cancel a home solicitation sale in any manner and by any means if the seller has not complied with the requirements for the notice of cancellation found in this section. *Flodman v. Robinson*, 22 Neb. App. 943, 864 N.W.2d 716 (2015).

As an alternative to the language provided in this section for the seller's notice of cancellation, a seller is permitted to use the

language provided by the Federal Trade Commission. *Flodman v. Robinson*, 22 Neb. App. 943, 864 N.W.2d 716 (2015).

This section contains the language a seller is required to include in a notice of cancellation. *Flodman v. Robinson*, 22 Neb. App. 943, 864 N.W.2d 716 (2015).

69-1605 Cancellation, effect.

(1) Within ten days after a home solicitation sale has been canceled, the seller shall cause any money paid by the buyer, including a downpayment, to be returned to the buyer and shall take appropriate action to reflect the termination of the transaction including any security interest created as a result.

(2) Upon cancellation, as allowed by sections 69-1601 to 69-1607, the buyer shall not be liable for any finance or other charge and the transaction, including any security interest, shall be void.

(3) If the seller receives any property from the buyer, he shall return such property in substantially as good condition as it was when it was given within twenty days after cancellation of the transaction. If such property is not returned within such time, the buyer may recover the property or the greater of its agreed or fair market value at retail.

Source: Laws 1974, LB 212, § 5.

69-1606 Duty of buyer; failure of seller to take possession; performance of service, how treated.

(1) The buyer shall take reasonable care of any property received pursuant to the home solicitation sale in his possession before cancellation and for a reasonable time after tender, not to exceed twenty days.

(2) Upon the performance of the seller's obligations under section 69-1605, the buyer shall tender such property to the seller except that if the return of such property to the seller is inequitable, the buyer shall tender its reasonable value.

(3) Tender shall be made at the location of the property or at the residence of the buyer at the option of the buyer.

(4) If the seller does not take possession of such property within twenty days after tender by the buyer, ownership of such property shall vest in the buyer without obligation on his part to pay for it.

(5) If a seller performs any services pursuant to a home solicitation sale prior to its cancellation, the seller shall not be entitled to compensation.

Source: Laws 1974, LB 212, § 6.

69-1607 Sale made in violation of sections; buyer recovery.

Any sale made in violation of sections 69-1601 to 69-1607 shall entitle the buyer to recover any sums paid to the seller pursuant to the transaction along with the actual damages, including any incidental and consequential damages, sustained by the buyer by reason of the violation, together with the costs of the suit, including a reasonable attorney's fee.

Source: Laws 1974, LB 212, § 7.

ARTICLE 17

ADVERTISING SIGNS

Section

- 69-1701. Outdoor advertising sign; removal by public body; compensation; how determined; exception.
- 69-1702. Nonconforming advertising sign; conformance required; when.

69-1701 Outdoor advertising sign; removal by public body; compensation; how determined; exception.

(1) Before an outdoor advertising sign, display, or device is removed, taken, or appropriated through the use of zoning or any other power or authority possessed by the state, a state agency, or a political subdivision of the state:

(a) The value of the sign, display, or device shall be determined by the taking entity without the use of any amortization schedule; and

(b) The owners of the sign, display, or device shall be paid the fair and reasonable market value for such removal, taking, or appropriation, which fair and reasonable market value shall be based upon the depreciated reproduction cost of such sign, display, or device using as a guideline the Nebraska Sign Schedule developed and used by the Department of Transportation, except that, when feasible, the taking entity may elect to relocate such sign, display, or device, in which event the owners of the sign, display, or device shall be paid the actual and necessary relocation cost therefor.

(2) Subsection (1) of this section shall not apply to:

(a) Actions taken by the Department of Transportation pursuant to sections 39-212 to 39-226 and 39-1320; and

(b) The removal, taking, or appropriation of a sign, display, or device which (i) is insecurely fixed or inadequately maintained such that the sign, display, or

device constitutes a danger to the public health or safety, or (ii) has been abandoned or no longer used by the owners for at least six months.

Source: Laws 1981, LB 241, § 1; Laws 1995, LB 264, § 35; Laws 2017, LB339, § 244.

69-1702 Nonconforming advertising sign; conformance required; when.

If a nonconforming advertising sign, display, or device is located on premises leased or owned for the purpose of conducting a business or on commercial or industrial premises leased for the purpose of sign erection, such sign, display, or device shall be required to conform to existing codes and regulations, when such sign, display, or device is changed or altered as a result of either transfer of ownership of the premises or business or a change in the type of business or use of the premises. Such sign, display, or device may be allowed to remain as a nonconforming use subject to applicable normal nonreplacement and nonalteration standards as determined by the state, a state agency, or political subdivision of the state.

Source: Laws 1981, LB 241, § 2.

ARTICLE 18

AMERICAN INDIAN ARTS AND CRAFTS SALES ACT

Section

- 69-1801. Act, how cited.
- 69-1802. Act, purpose.
- 69-1803. Terms, defined.
- 69-1804. Manufacturer; provide information.
- 69-1805. Supplier of turquoise; provide information.
- 69-1806. Sellers; duties.
- 69-1807. Prohibited acts.
- 69-1808. Violations; penalty.

69-1801 Act, how cited.

Sections 69-1801 to 69-1808 shall be known and may be cited as the American Indian Arts and Crafts Sales Act.

Source: Laws 1986, LB 275, § 1.

69-1802 Act, purpose.

The purpose of the American Indian Arts and Crafts Sales Act is protection of the consumer and protection of American Indian craftpersons from false representation in the offering for sale, sale, trade, or purchase of authentic American Indian arts and crafts and natural and unnatural turquoise.

Source: Laws 1986, LB 275, § 2.

69-1803 Terms, defined.

As used in the American Indian Arts and Crafts Sales Act, unless the context otherwise requires:

- (1) American Indian shall mean any person of at least one-quarter American Indian blood who is enrolled or is a lineal descendant of an American Indian enrolled upon enrollment listing of the federal Bureau of Indian Affairs;

(2) Imitation American Indian arts and crafts shall mean any American-Indian-style arts and crafts which are made by machine, made of synthetic or artificial material, or made by persons who are not American Indians;

(3) Authentic American Indian arts and crafts shall mean any arts and crafts which are handcrafted by American Indians and made of natural materials;

(4) Machine-made shall mean the manufacture of American-Indian-style arts and crafts in mass production by mechanically stamping, casting, shaping, or weaving;

(5) Handcrafted arts and crafts shall mean any arts and crafts produced by individual hand labor through the use of findings, hand tools, and equipment for buffing, polishing, grinding, or drilling;

(6) Findings shall mean only those pieces that come under the category of clips, pins, stems, hooks, and toggles and other materials used in joining two or more parts of a single handcrafted product, but shall not mean bench-made beads, machine-made beads, or other machine-made components;

(7) Spin cast shall mean the casting of jewelry components other than findings by means of centrifugal force;

(8) Natural turquoise shall mean an unadulterated mineral consisting of hydrous basic copper aluminum phosphate which has not been chemically altered or discolored other than by natural alteration or discoloration; and

(9) Unnatural turquoise shall mean any mineral, compound, or substance which is not natural turquoise, including the following: Stabilized turquoise which is turquoise of a soft, porous nature which has been chemically hardened, but not adulterated so as to change the coloration of the natural mineral; treated turquoise which is turquoise which has been chemically altered to produce a change in the coloration of the natural mineral; reconstituted turquoise which is turquoise dust and particles which have been mixed with plastic resins and compressed into a solid form so as to resemble natural turquoise; imitation turquoise which is any artificial compound or other mineral manufactured or treated so as to closely resemble natural turquoise in composition and color; and any other mineral which is represented as turquoise but is not natural turquoise.

Source: Laws 1986, LB 275, § 3.

69-1804 Manufacturer; provide information.

Any person engaged in manufacturing or producing American Indian arts and crafts shall provide accurate information to wholesale and retail sellers concerning the methods and materials used in manufacturing and producing such arts and crafts.

Source: Laws 1986, LB 275, § 4.

69-1805 Supplier of turquoise; provide information.

Any person engaged in supplying natural turquoise, unnatural turquoise, or both for use in the manufacture or production of American Indian arts and crafts or for sale to consumers shall provide accurate information concerning the source and quality of the turquoise being supplied.

Source: Laws 1986, LB 275, § 5.

69-1806 Sellers; duties.

Any person selling or offering for sale to consumers any American Indian arts and crafts shall make inquiry of manufacturers and producers of such arts and crafts concerning the methods and materials used in the manufacture and production of such arts and crafts for the purpose of determining whether such arts and crafts are authentic or imitation.

Source: Laws 1986, LB 275, § 6.

69-1807 Prohibited acts.

It shall be unlawful for any person engaged in the manufacture, production, wholesale selling, or retail selling of American Indian arts and crafts to:

(1) Sell or offer for sale any products as being authentic American Indian arts and crafts unless such products are made in accordance with the definition of authentic American Indian arts and crafts in the American Indian Arts and Crafts Sales Act;

(2) Sell or offer for sale any authentic American Indian arts and crafts purporting to be made of silver unless such products are made of coin silver or sterling silver;

(3) Sell or offer for sale any imitation American Indian arts and crafts unless such products are clearly designated as such by a tag attached to each product and containing the words Indian imitation in letters of a size of not less than fourteen-point type, except that if the imitation American Indian arts and crafts can be clearly labeled by the use of a display card in lieu of tagging each article, the person may label such arts and crafts with a printed display card in letters not less than one and one-half inches in height and containing the words Indian imitation;

(4) Sell or offer for sale spin-cast components of American Indian jewelry, except findings, or use such spin-cast components in jewelry unless such jewelry is stamped as being so cast in its manufacture; or

(5) Sell or offer for sale unnatural turquoise unless represented by a display card or tag as being unnatural turquoise.

Source: Laws 1986, LB 275, § 7.

69-1808 Violations; penalty.

Any person who violates any provision of the American Indian Arts and Crafts Sales Act shall be guilty of a Class IV misdemeanor.

Source: Laws 1986, LB 275, § 8.

ARTICLE 19**SMOKELESS TOBACCO PRODUCTS**

Section

69-1901. Legislative intent.

69-1902. Terms, defined.

69-1903. Distribution for promotional purposes prohibited.

69-1904. Enforcement; penalty.

69-1901 Legislative intent.

The Legislature hereby finds that the state prohibits the use of smokeless tobacco products by minors and the furnishing of smokeless tobacco products

to minors and that the enforcement of an age-related restriction on the promotional distribution of smokeless tobacco products is impractical and ineffective. It is the intent of the Legislature to control the distribution of these products and discourage illegal activity by prohibiting all promotional distribution.

Source: Laws 1989, LB 48, § 1.

69-1902 Terms, defined.

For purposes of sections 69-1901 to 69-1904:

(1) Distribute shall mean to give smokeless tobacco products to the general public at no cost or at nominal cost or to give coupons or rebate offers with the products; and

(2) Smokeless tobacco product shall mean (a) loose tobacco or a flat compressed cake of tobacco that may be chewed or held in the mouth or (b) a small amount of shredded, powdered, or pulverized tobacco that may be inhaled through the nostrils, chewed, or held in the mouth.

Source: Laws 1989, LB 48, § 2.

69-1903 Distribution for promotional purposes prohibited.

(1) Manufacturers, wholesalers, or retailers, or their representatives, of smokeless tobacco products shall not distribute for promotional purposes.

(2) Evidence of distribution of smokeless tobacco products to the general public shall be prima facie evidence of distribution for promotional purposes.

Source: Laws 1989, LB 48, § 3.

69-1904 Enforcement; penalty.

(1) The Attorney General shall apply for an injunction in the district court in the county in which any violation of section 69-1903 occurs to enjoin the defendant from engaging in any practice which violates such section. Notice shall be given by certified mail to the defendant at least five days prior to the hearing on such injunction.

(2) The Attorney General may bring a civil action against any person violating section 69-1903. A civil penalty shall be imposed on such person in an amount of five hundred dollars for the first offense and in an amount of not less than six hundred dollars nor more than three thousand dollars for a second or subsequent offense. Each distribution of a single package to an individual member of the general public shall be considered a separate violation under section 69-1903.

Source: Laws 1989, LB 48, § 4.

ARTICLE 20

DEGRADABLE PRODUCTS

Section

- 69-2001. Act, how cited.
- 69-2002. Definitions, where found.
- 69-2003. Biodegradable, defined.
- 69-2004. Degradable, defined.
- 69-2005. Photodegradable, defined.
- 69-2006. Recyclable, defined.

Section	
69-2007.	Retail, defined.
69-2008.	Beverage container connectors; requirements.
69-2009.	Garbage bags; requirements.
69-2010.	Grocery or shopping bags; requirements.
69-2011.	Disposable diapers; requirements; Director of Environmental Quality; duties.
69-2012.	Violations; penalty.

69-2001 Act, how cited.

Sections 69-2001 to 69-2012 shall be known and may be cited as the Degradable Products Act.

Source: Laws 1989, LB 325, § 1.

69-2002 Definitions, where found.

For purposes of the Degradable Products Act, the definitions found in sections 69-2003 to 69-2007 shall be used.

Source: Laws 1989, LB 325, § 2.

69-2003 Biodegradable, defined.

Biodegradable shall mean degradable through a process by which fungi or bacteria secrete enzymes to convert a complex molecular structure to simple gases and organic compounds.

Source: Laws 1989, LB 325, § 3.

69-2004 Degradable, defined.

Degradable shall mean capable of decomposing or deteriorating through a natural chemical process into harmless components after exposure to natural elements for not more than one year.

Source: Laws 1989, LB 325, § 4.

69-2005 Photodegradable, defined.

Photodegradable shall mean degradable through a process in which ultraviolet radiation in sunlight causes a chemical change in a material.

Source: Laws 1989, LB 325, § 5.

69-2006 Recyclable, defined.

Recyclable shall mean suitable for any process of separating, cleaning, treating, and reconstituting waste or other discarded materials for the purpose of recovering or reusing the resources contained therein.

Source: Laws 1989, LB 325, § 6.

69-2007 Retail, defined.

Retail shall mean sale for use or consumption and not for resale in any form.

Source: Laws 1989, LB 325, § 7.

69-2008 Beverage container connectors; requirements.

On and after January 1, 1991, a person shall not sell or offer for sale at retail any beverage for human consumption if the beverage container is connected to

another beverage container by a device which is constructed of a material which is not biodegradable, photodegradable, or recyclable.

Source: Laws 1989, LB 325, § 8; Laws 1992, LB 1257, § 72.

69-2009 Garbage bags; requirements.

On and after January 1, 1992, a person shall not sell or offer for sale at retail any bag used for or intended to be used for grass clippings, garbage, yard waste, or leaves which is constructed of a material which is not biodegradable, photodegradable, or recyclable.

Source: Laws 1989, LB 325, § 9; Laws 1992, LB 1257, § 73.

69-2010 Grocery or shopping bags; requirements.

On and after January 1, 1992, a person shall not sell or offer for sale at retail any bag used for or intended to be used for groceries or shopping which is constructed of a material which is not biodegradable, photodegradable, or recyclable.

Source: Laws 1989, LB 325, § 10.

69-2011 Disposable diapers; requirements; Director of Environmental Quality; duties.

On and after October 1, 1993, a person shall not sell or offer for sale at retail any disposable diaper which is constructed of a material which is not biodegradable or photodegradable if the Director of Environmental Quality determines that biodegradable or photodegradable disposable diapers are readily available at a comparable price and quality. The determination of quality shall include a study of the environmental impact and fate of such disposable diapers. The director shall issue his or her determination to the Legislature on or before October 1, 1992. For purposes of this section (1) readily available shall mean available for purchase in sufficient quantities to meet demand through usual retail channels throughout the state and (2) comparable price and quality shall mean at a cost not in excess of five percent above the average price for products of comparable quality which are not biodegradable or photodegradable.

Source: Laws 1989, LB 325, § 11; Laws 1993, LB 3, § 42.

69-2012 Violations; penalty.

Any person violating sections 69-2008 to 69-2011 shall be guilty of a Class III misdemeanor.

Source: Laws 1989, LB 325, § 12.

ARTICLE 21

CONSUMER RENTAL PURCHASE AGREEMENTS

Section

- 69-2101. Act, how cited.
- 69-2102. Legislative findings.
- 69-2103. Terms, defined.
- 69-2104. Lessor; disclosures required.
- 69-2105. Disclosures; how made; rules and regulations; agreement; contents.
- 69-2106. Written receipt; required; when.

Section

- 69-2107. Agreements; prohibited provisions.
- 69-2108. Agreement; contents.
- 69-2109. Lessor; prohibited acts.
- 69-2110. Fees; deposits; charges.
- 69-2111. Renegotiation; when; extension; effect.
- 69-2112. Advertisement; requirements.
- 69-2113. Lessor; liability; offset, not permitted; lessor; preserve evidence.
- 69-2114. Actions; statute of limitations.
- 69-2115. Lessor; not liable; when.
- 69-2116. Director of Banking and Finance; investigations; other proceedings; powers.
- 69-2117. Cease and desist order; fine; injunction; procedures; appeal.
- 69-2118. Examination of books and records.
- 69-2119. Personal jurisdiction over lessor.

69-2101 Act, how cited.

Sections 69-2101 to 69-2119 shall be known and may be cited as the Consumer Rental Purchase Agreement Act.

Source: Laws 1989, LB 681, § 1; Laws 1993, LB 111, § 1.

69-2102 Legislative findings.

The Legislature finds that a significant number of consumers have sought to acquire ownership of personal property through consumer rental purchase agreements. Often consumer rental purchase agreements have been offered without adequate cost disclosures. It is the purpose of the Consumer Rental Purchase Agreement Act to assure meaningful disclosure of the terms of consumer rental purchase agreements, to make consumers aware of the total cost attendant with such agreements, to inform the consumer when ownership will transfer, and to assure accurate disclosures of rental purchase terms in advertising.

Source: Laws 1989, LB 681, § 2.

69-2103 Terms, defined.

For purposes of the Consumer Rental Purchase Agreement Act:

- (1) Advertisement means a commercial message in any medium that aids, promotes, or assists directly or indirectly a consumer rental purchase agreement but does not include in-store merchandising aids such as window signs and ceiling banners;
- (2) Cash price means the price at which the lessor would have sold the property to the consumer for cash on the date of the consumer rental purchase agreement for the property;
- (3) Consumer means a natural person who rents property under a consumer rental purchase agreement;
- (4) Consumer rental purchase agreement means an agreement which is for the use of property by a consumer primarily for personal, family, or household purposes, which is for an initial period of four months or less, whether or not there is any obligation beyond the initial period, which is automatically renewable with each payment, and which permits the consumer to become the owner of the property. A consumer rental purchase agreement in compliance with the act shall not be construed to be a lease or agreement which constitutes a credit sale as defined in 12 C.F.R. 1026.2(a)(16), as such regulation existed on

January 1, 2016, and 15 U.S.C. 1602(h), as such section existed on January 1, 2016, or a lease which constitutes a consumer lease as defined in 12 C.F.R. 1013.2, as such regulation existed on January 1, 2016. Consumer rental purchase agreement does not include:

- (a) Any lease for agricultural, business, or commercial purposes;
 - (b) Any lease made to an organization;
 - (c) A lease or agreement which constitutes an installment sale or installment contract as defined in section 45-335;
 - (d) A security interest as defined in subdivision (35) of section 1-201, Uniform Commercial Code; and
 - (e) A home solicitation sale as defined in section 69-1601;
- (5) Consummation means the occurrence of an event which causes a consumer to become contractually obligated on a consumer rental purchase agreement;
- (6) Department means the Department of Banking and Finance;
- (7) Lease payment means a payment to be made by the consumer for the right of possession and use of the property for a specific lease period but does not include taxes imposed on such payment;
- (8) Lease period means a week, month, or other specific period of time, during which the consumer has the right to possess and use the property after paying the lease payment and applicable taxes for such period;
- (9) Lessor means a person who in the ordinary course of business operates a commercial outlet which regularly leases, offers to lease, or arranges for the leasing of property under a consumer rental purchase agreement;
- (10) Property means any property that is not real property under the laws of this state when made available for a consumer rental purchase agreement; and
- (11) Total of payments to acquire ownership means the total of all charges imposed by the lessor and payable by the consumer as a condition of acquiring ownership of the property. Total of payments to acquire ownership includes lease payments and any initial nonrefundable administrative fee or required delivery charge but does not include taxes, late charges, reinstatement fees, or charges for optional products or services.

Source: Laws 1989, LB 681, § 3; Laws 1993, LB 111, § 2; Laws 2001, LB 641, § 1; Laws 2005, LB 570, § 3; Laws 2011, LB76, § 6; Laws 2016, LB761, § 1.

69-2104 Lessor; disclosures required.

- (1) Before entering into any consumer rental purchase agreement, the lessor shall disclose to the consumer the following items as applicable:
- (a) A brief description of the leased property sufficient to identify the property to the consumer and lessor;
 - (b) The number, amount, and timing of all payments included in the total of payments to acquire ownership;
 - (c) The total of payments to acquire ownership;
 - (d) A statement that the consumer will not own the property until the consumer has paid the total of payments to acquire ownership plus applicable taxes;

(e) A statement that the total of payments to acquire ownership does not include other charges such as taxes, late charges, reinstatement fees, or charges for optional products or services the consumer may have elected to purchase and that the consumer should see the rental purchase agreement for an explanation of these charges;

(f) A statement that the consumer is responsible for the fair market value, remaining rent, early purchase option amount, or cost of repair of the property, whichever is less, if it is lost, stolen, damaged, or destroyed;

(g) A statement indicating whether the property is new or used. A statement that indicates that new property is used shall not be a violation of the Consumer Rental Purchase Agreement Act;

(h) A statement of the cash price of the property. When the agreement involves a lease for two or more items, a statement of the aggregate cash price of all items shall satisfy the requirement of this subdivision;

(i) The total amount of the initial payments required to be paid before consummation of the agreement or delivery of the property, whichever occurs later, and an itemization of the components of the initial payment, including any initial nonrefundable administrative fee or delivery charge, lease payment, taxes, or fee or charge for optional products or services;

(j) A statement clearly summarizing the terms of the consumer's options to purchase, including a statement that at any time after the first periodic payment is made the consumer may acquire ownership of the property by tendering an amount which may not exceed fifty-five percent of the difference between the total of payments to acquire ownership and the total of lease payments the consumer has paid on the property at that time;

(k) A statement identifying the party responsible for maintaining or servicing the property while it is being leased, together with a description of that responsibility and a statement that if any part of a manufacturer's warranty covers the leased property at the time the consumer acquires ownership of the property, such warranty shall be transferred to the consumer if allowed by the terms of the warranty; and

(l) The date of the transaction and the names of the lessor and the consumer.

(2) With respect to matters specifically governed by the Consumer Credit Protection Act, 15 U.S.C. 1601 et seq., as such act existed on January 1, 2016, compliance with such act shall satisfy the requirements of this section.

(3) Subsection (1) of this section shall not apply to a lessor who complies with the disclosure requirements of the Consumer Credit Protection Act, 15 U.S.C. 1667a, as such section existed on January 1, 2016, with respect to a consumer rental purchase agreement entered into with a consumer.

Source: Laws 1989, LB 681, § 4; Laws 2001, LB 641, § 2; Laws 2011, LB76, § 7; Laws 2016, LB761, § 2.

69-2105 Disclosures; how made; rules and regulations; agreement; contents.

(1) In a consumer rental purchase agreement involving more than one consumer, a lessor need disclose the items required by the Consumer Rental Purchase Agreement Act to only one of the consumers who is primarily obligated. In a consumer rental purchase agreement involving more than one lessor, only one lessor need make the required disclosures.

(2) The disclosures required under the act shall be made at or before consummation of the consumer rental purchase agreement.

(3) The disclosures shall be made using words and phrases of common meaning in a form that the consumer may keep. For purposes of satisfying the disclosure requirements of the act, the terms lease and rent shall be considered synonymous. The required disclosures shall be set forth clearly and conspicuously. The disclosures shall be placed all together on the front side of the consumer rental purchase agreement or on a separate form. The form setting forth the required disclosures shall contain spaces for the consumer's signature and the date appearing immediately below the disclosures. If the disclosures are made on more than one page, each page shall be signed by the consumer. The requirements of this section shall not have been complied with unless the consumer signs the statement and receives at the time the disclosures are made a legible copy of the signed statement. The inclusion in the required disclosures of a statement that the consumer received a legible copy of those disclosures shall create a rebuttable presumption of receipt.

(4) Information required to be disclosed may be given in the form of estimates. Estimates shall be identified as such.

(5) If a disclosure becomes inaccurate as the result of any act, occurrence, or agreement after delivery of the required disclosures, the resulting inaccuracy shall not be a violation of the act.

(6) Information in addition to that required by section 69-2104 may be disclosed if the additional information is not stated, utilized, or placed in a manner which will contradict, obscure, or detract attention from the required information.

(7) The department shall adopt and promulgate rules and regulations establishing requirements for the order, acknowledgment by initialing, and conspicuous placement of the disclosures set forth in section 69-2104. Such rules and regulations may allow the disclosures to be made in accordance with model forms prepared by the department.

(8) The terms of the consumer rental purchase agreement, except as otherwise provided in the Consumer Rental Purchase Agreement Act, shall be set forth in not less than eight-point standard type or such similar type as prescribed in rules and regulations adopted and promulgated by the department.

(9) Every consumer rental purchase agreement shall contain, immediately above or adjacent to the place for the signature of the consumer, a clear, conspicuous, printed or typewritten notice, in boldface, ten-point type, in substantially the following language:

NOTICE TO CONSUMER — READ BEFORE SIGNING

a. DO NOT SIGN THIS BEFORE YOU READ THE ENTIRE AGREEMENT, INCLUDING ANY WRITING ON THE REVERSE SIDE, EVEN IF OTHERWISE ADVISED.

b. DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.

c. YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.

Source: Laws 1989, LB 681, § 5; Laws 2001, LB 641, § 3.

69-2106 Written receipt; required; when.

The lessor shall furnish the consumer upon request with an itemized written receipt for payment in cash or any other method of payment which itself does not provide evidence of payment.

Source: Laws 1989, LB 681, § 6.

69-2107 Agreements; prohibited provisions.

A consumer rental purchase agreement may not contain a provision:

- (1) Requiring a confession of judgment;
- (2) Requiring a garnishment of wages;
- (3) Granting authorization to the lessor or a person acting on the lessor's behalf to enter unlawfully upon the consumer's premises or to commit any breach of the peace in the repossession of property;
- (4) Requiring the consumer to waive any defense, counterclaim, or right of action against the lessor or a person acting on the lessor's behalf in collection of payment under the consumer rental purchase agreement or in the repossession of property; or
- (5) Requiring purchase of insurance from the lessor to cover the property.

Source: Laws 1989, LB 681, § 7.

69-2108 Agreement; contents.

Each consumer rental purchase agreement shall:

- (1) Provide that the consumer may terminate the agreement without penalty by voluntarily surrendering or returning the property upon expiration of any lease term; and
- (2) Contain a provision for reinstatement which shall include, but not be limited to:
 - (a) Permitting a consumer who fails to make a timely lease payment to reinstate the agreement without losing any rights or options which exist under the agreement by the payment of all past-due lease charges, the reasonable costs of pickup, redelivery, and any refurbishing, and any applicable late fee within five business days of the renewal date of the agreement if the consumer pays monthly or within three business days of the renewal date of the agreement if the consumer pays more frequently than monthly; and
 - (b) Permitting the consumer to reinstate the agreement during a period of not less than thirty days after the date of the return of the property if the consumer promptly returns or voluntarily surrenders the property upon request by the lessor or its agent. In the event the consumer has paid not less than sixty percent and not more than eighty percent of the total of payments to acquire ownership, the reinstatement period shall be extended to a total of ninety days after the date of the return of the property. In the event the consumer has paid eighty percent or more of the total of payments to acquire ownership, the reinstatement period shall be extended to a total of one hundred eighty days after the date of the return of the property.

Nothing in this section shall prevent a lessor from attempting to repossess property during the reinstatement period, but such repossession shall not affect the consumer's right to reinstate. Upon reinstatement, the lessor shall provide

the consumer with the same property or substitute property of comparable quality and condition.

Source: Laws 1989, LB 681, § 8; Laws 2001, LB 641, § 4.

69-2109 Lessor; prohibited acts.

A lessor shall not:

(1) Charge a penalty for early termination of a consumer rental purchase agreement or for the return of an item at any point except for those charges authorized by section 69-2110;

(2) Require payment by a cosigner of the consumer rental purchase agreement of any fees or charges which could not be imposed upon the consumer as part of the consumer rental purchase agreement;

(3) Require payment of any charges unless specifically authorized by subsection (1) of section 69-2110; or

(4) Increase the lease payment or the total of payments to acquire ownership as a result of a consumer's declining to purchase liability damage waiver.

Source: Laws 1989, LB 681, § 9; Laws 1993, LB 111, § 3; Laws 2001, LB 641, § 5.

69-2110 Fees; deposits; charges.

(1) The lessor may contract for and receive:

(a) An initial nonrefundable administrative fee of not more than ten dollars;

(b) A security deposit, if the amount of the deposit and the conditions under which all or a part of the deposit will be returned is disclosed with the disclosures required by sections 69-2104 and 69-2105;

(c) A delivery charge of not more than ten dollars or, in the case of a consumer rental purchase agreement covering more than five items, a delivery charge of not more than twenty-five dollars, if (i) the lessor actually delivers the items to the place designated by the consumer, (ii) the delivery charge is disclosed with the disclosures required by sections 69-2104 and 69-2105, and (iii) such charge is in lieu of and not in addition to the administrative fee in subsection (1) of this section;

(d) Late fees as follows:

(i) For consumer rental purchase agreements with monthly renewal dates, a late fee of not more than five dollars may be assessed on any payment not made within five business days after the payment is due;

(ii) For consumer rental purchase agreements with more frequent than monthly renewal dates, a late fee of not more than three dollars may be assessed on any payment not made within three business days after payment is due; and

(iii) A late fee on a consumer rental purchase agreement may be collected only once on any accrued payment no matter how long such payment remains unpaid, may be collected at the time it accrues or at any time thereafter, and shall not be assessed against a payment that is timely made even though an earlier late fee has not been paid in full; and

(e) In addition to any applicable late fee, a reinstatement fee of not more than five dollars which may be assessed only if the consumer exercises the reinstatement provision of the agreement.

(2) The parties may contract for fees for liability damage waiver or similar products or services if:

(a) Purchasing the product or service is optional and is not a factor in the approval of the lessor of the consumer rental purchase transaction and such facts are clearly disclosed in writing to the consumer; and

(b) The consumer has signed or initialed an affirmative written request to purchase the product or service after receiving a written disclosure of the cost of such product or service.

(3) In addition to the requirements in subsection (2) of this section a contract containing fees for liability damage waiver shall include the following:

(a) For a consumer rental purchase agreement with scheduled lease payments more frequent than monthly, the amount of the liability damage waiver shall not exceed eight percent of any lease payment or two dollars for each scheduled lease payment, whichever is greater; and

(b) For a consumer rental purchase agreement with monthly lease payments, the amount of the liability damage waiver shall not exceed eight percent of any lease payment or five dollars for each scheduled lease payment, whichever is greater.

(4) The parties may contract for other products or services incidental to the consumer rental purchase transaction which do not evade the provisions of the Consumer Rental Purchase Agreement Act.

Source: Laws 1989, LB 681, § 10; Laws 1993, LB 111, § 4; Laws 2001, LB 641, § 6.

69-2111 Renegotiation; when; extension; effect.

(1) A renegotiation shall be deemed to occur when an existing consumer rental purchase agreement is satisfied and replaced by a new agreement undertaken by the same consumer. A renegotiation shall be considered a new agreement requiring new disclosures. Renegotiation shall not include:

(a) The addition or return of property in a multiple-item agreement or the substitution of leased property if in either case the average payment allocable to a payment period is not changed by more than twenty-five percent;

(b) Deferral or extension of one or more periodic payments or portions of a periodic payment;

(c) A reduction in charges in the agreement;

(d) An agreement involving a court proceeding; and

(e) Any other event described in rules and regulations adopted and promulgated by the department.

(2) No disclosures shall be required for any extension of a consumer rental purchase agreement.

Source: Laws 1989, LB 681, § 11.

69-2112 Advertisement; requirements.

(1) Any advertisement for a consumer rental purchase agreement which refers to or states the amount of any payment or the right to acquire ownership for any specific item shall also state clearly and conspicuously the following if applicable:

- (a) That the transaction advertised is a consumer rental purchase agreement;
- (b) The total of payments to acquire ownership; and
- (c) That the consumer acquires no ownership rights until the total of payments to acquire ownership is paid.

(2) Any owner or employee of any medium in which an advertisement appears or through which it is disseminated shall not be liable under this section.

(3) Subsection (1) of this section shall not apply to an advertisement which does not refer to a specific item of property, which does not refer to or state the amount of any payment, or which is published in the yellow pages of a telephone directory or any similar directory of business.

(4) With respect to matters specifically governed by the Consumer Credit Protection Act, 15 U.S.C. 1601 et seq., as such act existed on January 1, 2016, compliance with such act shall satisfy the requirements of this section.

Source: Laws 1989, LB 681, § 12; Laws 2001, LB 641, § 7; Laws 2011, LB76, § 8; Laws 2016, LB761, § 3.

69-2113 Lessor; liability; offset, not permitted; lessor; preserve evidence.

(1) A lessor who fails to comply with the requirements of sections 69-2104 to 69-2110 with respect to a consumer shall be liable to the consumer for:

(a) The greater of the actual damages sustained by the consumer as a result of the violation or, in the case of an individual action, twenty-five percent of the total of payments to acquire ownership but not less than one hundred dollars nor more than one thousand dollars; and

(b) The costs of the action and reasonable attorney's fees.

(2) In the case of an advertisement, any lessor who fails to comply with the requirements of section 69-2112 with regard to any person shall be liable to that person for actual damages suffered from the violation, the costs of the action, and reasonable attorney's fees.

(3) When there is more than one lessor, liability shall be imposed only on the lessor who made the disclosures. When no disclosures have been made, liability shall be imposed jointly and severally on all lessors.

(4) When there is more than one consumer, there shall be only one recovery of damages under subsection (1) of this section for a violation of the Consumer Rental Purchase Agreement Act.

(5) Multiple violations in connection with a single consumer rental purchase agreement shall entitle the consumer to a single recovery under this section.

(6) A consumer shall not take any action to offset any amount for which a lessor is potentially liable under subsection (1) of this section against any amount owed by the consumer unless the amount of the lessor's liability has been determined by judgment of a court of competent jurisdiction in an action to which the lessor was a party. This subsection shall not bar a consumer then in default on the obligation from asserting a violation of the act as an original

action or as a defense or counterclaim to an action brought by the lessor to collect an amount owed by the consumer.

(7) In connection with any transaction covered under the act, the lessor shall preserve evidence of compliance with the provisions of the act for not less than two years from the date of consummation of the agreement.

Source: Laws 1989, LB 681, § 13; Laws 1990, LB 1217, § 1; Laws 2001, LB 641, § 8.

69-2114 Actions; statute of limitations.

An action under the Consumer Rental Purchase Agreement Act may be brought in any court of competent jurisdiction within one year of the date of the occurrence of any violation or within six months of the time the consumer rental purchase agreement and any renewal or extension of the agreement cease to be in effect, whichever occurs later. Notwithstanding the provisions of this section, an action under the act may be maintained by way of recoupment or counterclaim in an action brought against the consumer by the lessor or the lessor's assignee.

Source: Laws 1989, LB 681, § 14.

69-2115 Lessor; not liable; when.

(1) A lessor shall not be liable for a violation under section 69-2113 if the lessor proves by a preponderance of the evidence that the violation was not intentional, that the violation resulted from a bona fide error, and that the lessor maintained procedures reasonably adapted to avoid such an error. A bona fide error shall include, but not be limited to, clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to requirements of the Consumer Rental Purchase Agreement Act shall not be considered a bona fide error.

(2) A lessor shall not be liable under the act for any act done or omitted in good faith in conformity with any rule, regulation, or interpretation issued, adopted, or promulgated by the Attorney General, by the department, or by an official duly authorized by the Attorney General or the department even if after the act or omission has occurred the rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(3) With respect to the dollar amount of any disclosure required by the act, a lessor shall not be liable if the dollar amount actually disclosed is greater than the dollar amount required to be disclosed by the act.

Source: Laws 1989, LB 681, § 15; Laws 2001, LB 641, § 9.

69-2116 Director of Banking and Finance; investigations; other proceedings; powers.

(1)(a) The Director of Banking and Finance in his or her discretion may make such investigations within or without this state as he or she deems necessary to determine whether any person has violated or is about to violate the Consumer Rental Purchase Agreement Act or to aid in the enforcement of the act or in the adopting and promulgating of rules, regulations, and forms under the act. In the discretion of the director, the actual expense of any such investigation may be charged to the person who is the subject of the investigation.

(b) The director may publish information concerning any violation of the act or any rule, regulation, or order of the director.

(c) For the purpose of any investigation or proceeding under the act, the director or any officer designated by him or her may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

(2) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the director, may issue to that person an order requiring him or her to appear before the director or the officer designated by the director to produce documentary evidence if so ordered or to give evidence touching on the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court. The request for an order of compliance may be addressed to either (a) the district court of Lancaster County or the district court in the county where service may be obtained on the person refusing to testify or produce, if the person is within this state, or (b) the appropriate district court of the state having jurisdiction over the person refusing to testify or produce, if the person is outside this state.

Source: Laws 1993, LB 111, § 5.

69-2117 Cease and desist order; fine; injunction; procedures; appeal.

(1) The Director of Banking and Finance may summarily order a lessor to cease and desist from the use of certain forms or practices relating to consumer rental purchase agreements if he or she finds that (a) there has been a substantial failure to comply with any of the provisions of the Consumer Rental Purchase Agreement Act or (b) the continued use of certain forms or practices relating to consumer rental purchase agreements would constitute misrepresentation to or deceit or fraud on the consumer.

(2) If the director believes, whether or not based upon an investigation conducted under section 69-2116, that any person or lessor has engaged in or is about to engage in any act or practice constituting a violation of any provision of the Consumer Rental Purchase Agreement Act or any rule, regulation, or order under the act, the director may:

(a) Issue a cease and desist order;

(b) Impose a fine of not to exceed one thousand dollars per violation, in addition to costs of the investigation; or

(c) Initiate an action in any court of competent jurisdiction to enjoin such acts or practices and to enforce compliance with the act or any order under the act.

(3) Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted. The director shall not be required to post a bond.

(4) Any fine and costs imposed pursuant to this section shall be in addition to all other penalties imposed by the laws of this state and shall be collected by the director and remitted to the State Treasurer. Costs shall be credited to the Securities Act Cash Fund, and fines shall be credited to the permanent school fund. If a person fails to pay the fine or costs of the investigation referred to in

this subsection, a lien in the amount of the fine and costs shall be imposed upon all of the assets and property of such person in this state and may be recovered by suit by the director. Failure of the person to pay a fine and costs shall constitute a separate violation of the act.

(5) Upon entry of an order pursuant to this section, the director shall promptly notify all persons to whom such order is directed that it has been entered and of the reasons for such order and that any person to whom the order is directed may request a hearing in writing within fifteen business days of the issuance of the order. Upon a receipt of a written request, the matter shall be set down for hearing to commence within thirty business days after the receipt unless the parties consent to a later date or the hearing officer sets a later date for good cause. If a hearing is not requested within fifteen business days and none is ordered by the director, the order shall automatically become final and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director after notice and hearing shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order.

(6) The director may vacate or modify a cease and desist order if he or she finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so.

(7) Any person aggrieved by a final order of the director may appeal the order. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1993, LB 111, § 6; Laws 2001, LB 53, § 111.

Cross References

Administrative Procedure Act, see section 84-920.

69-2118 Examination of books and records.

To aid in the enforcement of the Consumer Rental Purchase Agreement Act, the Director of Banking and Finance may examine the books and records of any lessor at least once a year. The expense of the examination shall be assessed against such lessor.

Source: Laws 1993, LB 111, § 7.

69-2119 Personal jurisdiction over lessor.

Leasing or offering to lease or arrange for a leasing of property under a consumer rental purchase agreement in this state shall constitute sufficient contact with this state for the exercise of personal jurisdiction over the lessor in any action arising under the Consumer Rental Purchase Agreement Act.

Source: Laws 1993, LB 111, § 8.

ARTICLE 22

UNSOLICITED GOODS OR MERCHANDISE

Section
69-2201. Unsolicited goods or merchandise; disposal.

69-2201 Unsolicited goods or merchandise; disposal.

Unless otherwise agreed, where unsolicited goods or merchandise are sent through the mail to a person, he has a right to refuse to accept delivery of the

goods or merchandise and is not bound to return such goods or merchandise to the sender. If such unsolicited goods or merchandise are either addressed to or intended for the recipient, they shall be deemed a gift to the recipient who may use them or dispose of them in any manner without any obligations to the sender.

Source: Laws 1967, c. 358, § 1, p. 949; R.S.1943, (1986), § 63-104.

Cross References

Home solicitation sales, see Chapter 69, article 16.

ARTICLE 23

DISPOSITION OF PERSONAL PROPERTY
LANDLORD AND TENANT ACT

Section

- 69-2301. Act, how cited.
- 69-2302. Terms, defined.
- 69-2303. Personal property remaining on premises; landlord; duties; notice; contents; delivery.
- 69-2304. Notice; statement required.
- 69-2305. Notice; form.
- 69-2306. Landlord; property; removal and storage; liability.
- 69-2307. Landlord; release of personal property; when.
- 69-2308. Sale of personal property; when required; notice of sale; requirements; disposition of proceeds.
- 69-2309. Release or disposition of personal property; liability of landlord.
- 69-2310. Costs of storage; how assessed.
- 69-2311. Residential landlord; surrender personal property to residential tenant; conditions; applicability of section.
- 69-2312. Landlord retaining personal property; civil action authorized.
- 69-2313. Lost personal property; disposition; liability.
- 69-2314. Remedy; not exclusive.

69-2301 Act, how cited.

Sections 69-2301 to 69-2314 shall be known and may be cited as the Disposition of Personal Property Landlord and Tenant Act.

Source: Laws 1991, LB 36, § 1.

69-2302 Terms, defined.

For purposes of the Disposition of Personal Property Landlord and Tenant Act:

(1) Landlord shall mean the owner, lessor, or sublessor of furnished or unfurnished premises, including self-service storage units or facilities, for rent or his or her agent or successor in interest;

(2) Owner shall mean one or more persons, jointly or severally, in whom is vested (a) all or part of the legal title to property or (b) all or part of the beneficial ownership and a right to present use and enjoyment of premises and shall include a mortgagee in possession;

(3) Premises shall mean a building or a distinct portion of a building, the facilities and appurtenances in such building, and the grounds, areas, and facilities held out for the use of tenants generally or the use of which is promised to the tenants;

(4) Reasonable belief shall mean the knowledge or belief a prudent person should have without making an investigation, including any investigation of public records, except that when the landlord has specific information indicating that such an investigation would more probably than not reveal pertinent information and the cost of such an investigation would be reasonable in relation to the probable value of the personal property involved, reasonable belief shall include the actual knowledge or belief a prudent person would have if such investigation were made;

(5) Reasonable costs of storage shall include:

(a) Reasonable costs actually incurred, the reasonable value of labor actually provided, or both in removing personal property from its original location on the vacated premises to the place of storage, including disassembly and transportation; and

(b) Reasonable storage costs actually incurred which shall not exceed the fair rental value of the space reasonably required for the storage of the personal property; and

(6) Tenant shall mean a person entitled under a rental agreement to occupy any premises for rent or storage uses to the exclusion of others whether such premises are used as a dwelling unit or self-service storage unit or facility or not.

Source: Laws 1991, LB 36, § 2; Laws 1993, LB 617, § 1.

69-2303 Personal property remaining on premises; landlord; duties; notice; contents; delivery.

(1) Except as otherwise provided in subsection (5) of section 76-1414, when personal property remains on the premises after a tenancy has terminated or expired and the premises have been vacated by the tenant, the landlord shall give written notice as provided in subsection (2) of this section to such tenant and to any other person the landlord reasonably believes to be the owner of the property.

(2)(a) The notice required by subsection (1) of this section shall describe the property in a manner reasonably adequate to permit the owner of the property to identify it. The notice may describe all or a portion of the property, but the limitation of liability provided by section 69-2309 shall not protect the landlord from any liability arising from the disposition of property not described in the notice, except that a trunk, valise, box, or other container which is locked, fastened, or tied in a manner which deters immediate access to its contents may be described as such without describing its contents.

(b) The notice shall state that reasonable costs of storage may be charged before the property is returned, the location where the property may be claimed, and the date on or before which such property must be claimed.

(c) The date specified in the notice shall be a date not less than seven days after the notice is personally delivered or, if mailed, not less than fourteen days after the notice is deposited in the mail.

(d) The notice shall be given within six months of the date of expiration of the lease of the property or the date of discovery of the abandonment, whichever is later.

(3) The notice shall be personally delivered or sent by first-class mail, postage prepaid, to the person to be notified at his or her last-known address and, if

there is reason to believe that the notice sent to that address will not be received by him or her, also delivered or sent to such other address, if any, known to the landlord at which such person may reasonably be expected to receive the notice.

Source: Laws 1991, LB 36, § 3; Laws 1995, LB 175, § 1; Laws 2016, LB221, § 2.

69-2304 Notice; statement required.

A notice given pursuant to section 69-2303 shall contain one of the following statements, as appropriate:

(1) "If you fail to reclaim the property, it will be sold at a public sale after notice of the sale has been given by publication. You have the right to bid on the property at this sale. After the property is sold and the costs of storage, advertising, and sale are deducted, the remaining money will be turned over to the State Treasurer pursuant to the Uniform Disposition of Unclaimed Property Act. You may claim the remaining money from the office of the State Treasurer as provided in such act."; or

(2) "Because this property is believed to be worth less than two thousand dollars, it may be kept, sold, or destroyed without further notice if you fail to reclaim it within the time indicated in this notice."

Source: Laws 1991, LB 36, § 4; Laws 2010, LB712, § 44; Laws 2016, LB1075, § 1.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

69-2305 Notice; form.

(1) A notice given to a former tenant which is in substantially the following form shall satisfy the requirements of section 69-2303:

Notice of Right to Reclaim Abandoned Property

To:
(Name of former tenant)

.....
(Address of former tenant)

When you vacated the premises at
(Address of premises, including room or apartment number, if any)

the following personal property remained:
.....
(Insert description of the personal property)

You may claim this property at
.....
(Address where property may be claimed)

Unless you pay the reasonable costs of storage for all the above-described property and take possession of the property which you claim not later than, (insert date not less than seven days after notice is personally delivered or, if mailed, not less than fourteen days after notice is deposited in

the mail) this property may be disposed of pursuant to the Disposition of Personal Property Landlord and Tenant Act.

(Insert here the statement required by section 69-2304)

Dated: (Signature of landlord)
..... (Type or print name of landlord)
..... (Telephone number)
..... (Address)

(2) A notice which is in substantially the following form given to a person other than a former tenant whom the landlord reasonably believes to be the owner of personal property shall satisfy the requirements of section 69-2303:

Notice of Right to Reclaim Abandoned Property

To: (Name)
..... (Address)

When vacated the premises at (Name of former tenant)

..... (Address of premises, including room or apartment number, if any)

the following personal property remained:

..... (Insert description of the personal property)

If you own any of this property, you may claim it at

..... (Address where property may be claimed)

Unless you pay the reasonable costs of storage and take possession of the property to which you are entitled not later than, (insert date not less than seven days after notice is personally delivered or, if mailed, not less than fourteen days after notice is deposited in mail) this property may be disposed of pursuant to the Disposition of Personal Property Landlord and Tenant Act.

(Insert here the statement required by section 69-2304)

Dated: (Signature of landlord)
..... (Type or print name of landlord)
..... (Telephone number)
..... (Address)

69-2306 Landlord; property; removal and storage; liability.

A landlord may leave personal property on the vacated premises or may remove and store the property in a place of safekeeping until the landlord either releases or disposes of the property pursuant to the Disposition of Personal Property Landlord and Tenant Act. The landlord shall exercise reasonable care in storing the property but shall not be liable to the tenant or any other owner for any loss unless such loss is caused by the landlord's intentional or negligent act.

Source: Laws 1991, LB 36, § 6.

69-2307 Landlord; release of personal property; when.

(1) A landlord shall release personal property left on the vacated premises to the former tenant or to any person reasonably believed by the landlord to be the owner if such tenant or other person pays the reasonable costs of storage and advertising and takes possession of the property not later than the date specified in the notice for taking possession.

(2) When personal property is not released pursuant to subsection (1) of this section and the notice has stated that the personal property will be sold at a public sale, the landlord shall release the personal property to the former tenant or other person if he or she claims the property prior to sale and pays the reasonable costs of storage, advertising, and preparation for sale incurred prior to such claim and payment.

Source: Laws 1991, LB 36, § 7.

69-2308 Sale of personal property; when required; notice of sale; requirements; disposition of proceeds.

(1) If the personal property is not released pursuant to section 69-2307, it shall be sold at public sale by competitive bidding, except that if the landlord reasonably believes that the total resale value of the property not released is less than two thousand dollars, he or she may retain such property for his or her own use or dispose of it in any manner he or she chooses. At such time as the decision to sell or to retain is made, any locked trunk, valise, box, or other container shall be opened, if practicable, with as little damage as possible, and its contents evaluated. Nothing in this section shall be construed to preclude the landlord or the tenant from bidding on the property at the public sale. The successful bidder's title shall be subject to ownership rights, liens, and security interests which have priority by law.

(2) Notice of the time and place of the public sale shall be given by advertisement of the sale published once a week for two consecutive weeks in a newspaper of general circulation in the county where the sale is to be held. If there is no newspaper of general circulation in the county where the sale is to be held, the advertisement shall be posted no fewer than ten days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale. The sale shall be held at the nearest suitable place to the place where the personal property is held or stored. The advertisement shall include a description of the goods, the name of the former tenant, and the time and place of the sale. The sale shall take place no sooner than ten days after the first publication. The last publication shall be no less than five days before the sale is to be held. Notice of sale may be published before the last of the dates specified for

taking possession of the property in any notice given pursuant to section 69-2303.

(3) The notice of the sale shall describe the property to be sold in a manner reasonably adequate to permit the owner of the property to identify it. The notice may describe all or a portion of the property, but the limitation of liability provided by section 69-2309 shall not release the landlord from any liability arising from the disposition of property not described in the notice.

(4) After deduction of the reasonable costs of storage, advertising, and sale, any proceeds of the sale not claimed by the former tenant, an owner other than such tenant, or another person having an interest in the proceeds shall, not later than thirty days after the date of sale, be remitted to the State Treasurer for disposition pursuant to the Uniform Disposition of Unclaimed Property Act. The former tenant, other owner, or other person having interest in the proceeds may claim the proceeds by complying with the act. If the State Treasurer pays the proceeds or any part thereof to a claimant, neither the State Treasurer nor any employee thereof shall be liable to any other claimant as to the amount paid.

Source: Laws 1991, LB 36, § 8; Laws 2010, LB712, § 45; Laws 2016, LB1075, § 2.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

69-2309 Release or disposition of personal property; liability of landlord.

(1) If the landlord releases to the former tenant property which remains on the premises after a tenancy is terminated, the landlord shall not be liable to any person with respect to such property.

(2) If the landlord releases property pursuant to section 69-2307 to a person who is not the former tenant and who is reasonably believed by the landlord to be the owner of the property, the landlord shall not be liable with respect to such property to:

(a) Any person to whom notice was given pursuant to section 69-2303; and

(b) Any person to whom notice was not given pursuant to section 69-2303 unless such person proves that, prior to releasing the property, the landlord believed or reasonably should have believed that such person had an interest in the property and also that the landlord knew or should, upon reasonable investigation, have known the address of such person.

(3) When property is disposed of pursuant to section 69-2308, the landlord shall not be liable with respect to that property to:

(a) Any person to whom notice was given pursuant to section 69-2303; and

(b) Any person to whom notice was not given pursuant to section 69-2303 unless such person proves that, prior to disposing of the property pursuant to section 69-2308, the landlord believed or reasonably should have believed that such person had an interest in the property and also that the landlord knew or should, upon reasonable investigation, have known the address of such person.

Source: Laws 1991, LB 36, § 9.

69-2310 Costs of storage; how assessed.

(1) Costs of storage for which payment may be required shall be assessed in the following manner:

(a) When a former tenant claims property pursuant to section 69-2307, he or she may be required to pay the reasonable costs of storage for all the personal property remaining on the premises at the termination of the tenancy; and

(b) When an owner other than the former tenant claims property pursuant to section 69-2307, he or she may be required to pay the reasonable costs of storage for only the property in which he or she claims an interest.

(2) In determining the costs to be assessed under subsection (1) of this section, the landlord may not charge more than one person for the same costs.

Source: Laws 1991, LB 36, § 10.

69-2311 Residential landlord; surrender personal property to residential tenant; conditions; applicability of section.

A residential landlord shall surrender to a residential tenant or to a residential tenant's duly authorized representative any personal property not owned by the landlord which has been left on the premises after the tenant has vacated the residential premises and the return of which has been requested by the tenant or by the authorized representative of the tenant if:

(1) The tenant requests in writing, within fourteen days of vacating the premises, the surrender of the personal property and the request includes a description of the personal property held by the landlord and specifies the mailing address of the tenant;

(2) The landlord or the landlord's agent has control or possession of such personal property at the time the request is received;

(3) The tenant, prior to the surrender of the personal property by the landlord and upon written demand by the landlord, tenders payment of all reasonable costs associated with the landlord's removal and storage of the personal property. The landlord's demand for payment of reasonable costs associated with the removal and storage of personal property shall be in writing and shall either be mailed to the tenant at the address provided pursuant to subdivision (1) of this section or shall be personally presented to the tenant or to the tenant's authorized representative within five days after the actual receipt of the tenant's request for surrender of the personal property, unless the property is returned first. The demand shall itemize all charges, specifying the nature and amount of each item of cost; and

(4) The tenant agrees to claim and remove the personal property at a reasonable time mutually agreed upon by the landlord and tenant but not later than seventy-two hours after the tender provided for under subdivision (3) of this section.

This section shall not apply to the rental of a self-service storage unit or facility.

Source: Laws 1991, LB 36, § 11; Laws 1993, LB 617, § 2.

69-2312 Landlord retaining personal property; civil action authorized.

Any landlord who retains personal property in violation of the Disposition of Personal Property Landlord and Tenant Act shall be liable to the tenant in a civil action for:

(1) Actual damages not to exceed the value of the personal property if such property is not surrendered: (a) Within a reasonable time after the tenant requests surrender of the personal property; or (b) if the landlord has demanded payment of reasonable costs associated with removal and storage and the tenant has complied with the requirements of section 69-2311. Three days shall be presumed to be a reasonable time in the absence of evidence to the contrary; and

(2) Reasonable attorney’s fees and costs.

Source: Laws 1991, LB 36, § 12.

69-2313 Lost personal property; disposition; liability.

Personal property which the landlord reasonably believes to have been lost shall be disposed of as otherwise provided by law, but if the appropriate law enforcement agency or other governmental agency refuses to accept custody of such property, the landlord may dispose of the property pursuant to the Disposition of Personal Property Landlord and Tenant Act. The landlord shall not be liable to the owner of the property if he or she disposes of such property in compliance with the act.

Source: Laws 1991, LB 36, § 13.

69-2314 Remedy; not exclusive.

The remedy provided by the Disposition of Personal Property Landlord and Tenant Act shall not be exclusive and shall not preclude the landlord or the tenant from pursuing any other remedy provided by law.

Source: Laws 1991, LB 36, § 14.

ARTICLE 24

GUNS

(a) HANDGUNS

Section	
69-2401.	Legislative findings and declarations.
69-2402.	Terms, defined.
69-2403.	Sale, lease, rental, and transfer; certificate required; exceptions.
69-2404.	Certificate; application; fee.
69-2405.	Application; chief of police or sheriff; duties; immunity.
69-2406.	Certificate; denial or revocation; appeal; filing fee.
69-2407.	Certificate; contents; term; revocation.
69-2408.	False information on application; other violations; penalties; confiscation of handgun.
69-2409.	Automated criminal history files; legislative intent; system implementation; Nebraska State Patrol; superintendent; duties; purchase, lease, rental, or transfer; election.
69-2409.01.	Data base; created; disclosure; limitation; liability; prohibited act; violation; penalty; report; contents.
69-2410.	Importer, manufacturer, or dealer; sale or delivery; duties.
69-2411.	Request for criminal history record check; Nebraska State Patrol; duties; fee.
69-2412.	Records; confidentiality; destruction.
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PERSONAL PROPERTY

Section

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(a) HANDGUNS

69-2401 Legislative findings and declarations.

The Legislature hereby finds and declares that the state has a valid interest in the regulation of the purchase, lease, rental, and transfer of handguns and that requiring a certificate prior to the purchase, lease, rental, or transfer of a handgun serves a valid public purpose.

Source: Laws 1991, LB 355, § 1.

69-2402 Terms, defined.

For purposes of sections 69-2401 to 69-2425:

(1) Antique handgun or pistol means any handgun or pistol, including those with a matchlock, flintlock, percussion cap, or similar type of ignition system,

manufactured in or before 1898 and any replica of such a handgun or pistol if such replica (a) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or (b) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade;

(2) Criminal history record check includes a check of the criminal history records of the Nebraska State Patrol and a check of the Federal Bureau of Investigation's National Instant Criminal Background Check System;

(3) Firearm-related disability means a person is not permitted to (a) purchase, possess, ship, transport, or receive a firearm under either state or federal law, (b) obtain a certificate to purchase, lease, rent, or receive transfer of a handgun under section 69-2404, or (c) obtain a permit to carry a concealed handgun under the Concealed Handgun Permit Act; and

(4) Handgun means any firearm with a barrel less than sixteen inches in length or any firearm designed to be held and fired by the use of a single hand.

Source: Laws 1991, LB 355, § 25; Laws 1996, LB 1055, § 2; Laws 2006, LB 1227, § 1; Laws 2011, LB512, § 2.

Cross References

Concealed Handgun Permit Act, see section 69-2427.

69-2403 Sale, lease, rental, and transfer; certificate required; exceptions.

(1) Except as provided in this section and section 69-2409, a person shall not purchase, lease, rent, or receive transfer of a handgun until he or she has obtained a certificate in accordance with section 69-2404. Except as provided in this section and section 69-2409, a person shall not sell, lease, rent, or transfer a handgun to a person who has not obtained a certificate.

(2) The certificate shall not be required if:

(a) The person acquiring the handgun is a licensed firearms dealer under federal law;

(b) The handgun is an antique handgun;

(c) The person acquiring the handgun is authorized to do so on behalf of a law enforcement agency;

(d) The transfer is a temporary transfer of a handgun and the transferee remains (i) in the line of sight of the transferor or (ii) within the premises of an established shooting facility;

(e) The transfer is between a person and his or her spouse, sibling, parent, child, aunt, uncle, niece, nephew, or grandparent;

(f) The person acquiring the handgun is a holder of a valid permit under the Concealed Handgun Permit Act; or

(g) The person acquiring the handgun is a peace officer as defined in section 69-2429.

Source: Laws 1991, LB 355, § 2; Laws 2010, LB817, § 4.

Cross References

Concealed Handgun Permit Act, see section 69-2427.

69-2404 Certificate; application; fee.

Any person desiring to purchase, lease, rent, or receive transfer of a handgun shall apply with the chief of police or sheriff of the applicant's place of residence for a certificate. The application may be made in person or by mail. The application form and certificate shall be made on forms approved by the Superintendent of Law Enforcement and Public Safety. The application shall include the applicant's full name, address, date of birth, and country of citizenship. If the applicant is not a United States citizen, the application shall include the applicant's place of birth and his or her alien or admission number. If the application is made in person, the applicant shall also present a current Nebraska motor vehicle operator's license, state identification card, or military identification card, or if the application is made by mail, the application form shall describe the license or card used for identification and be notarized by a notary public who has verified the identification of the applicant through such a license or card. An applicant shall receive a certificate if he or she is twenty-one years of age or older and is not prohibited from purchasing or possessing a handgun by 18 U.S.C. 922. A fee of five dollars shall be charged for each application for a certificate to cover the cost of a criminal history record check.

Source: Laws 1991, LB 355, § 3; Laws 2006, LB 1227, § 2; Laws 2009, LB63, § 33.

69-2405 Application; chief of police or sheriff; duties; immunity.

Upon the receipt of an application for a certificate, the chief of police or sheriff shall issue a certificate or deny a certificate and furnish the applicant the specific reasons for the denial in writing. The chief of police or sheriff shall be permitted up to three days in which to conduct an investigation to determine whether the applicant is prohibited by law from purchasing or possessing a handgun. If the certificate or denial is mailed to the applicant, it shall be mailed to the applicant's address by first-class mail within the three-day period. If it is determined that the purchase or possession of a handgun by the applicant would be in violation of applicable federal, state, or local law, the chief of police or sheriff shall deny the certificate. In computing the three-day period, the day of receipt of the application shall not be included and the last day of the three-day period shall be included. The three-day period shall expire at 11:59 p.m. of the third day unless it is a Saturday, Sunday, or legal holiday in which event the period shall run until 11:59 p.m. of the next day which is not a Saturday, Sunday, or legal holiday. No later than the end of the three-day period the chief of police or sheriff shall issue or deny such certificate and, if the certificate is denied, furnish the applicant the specific reasons for denial in writing. No civil liability shall arise to any law enforcement agency if such law enforcement agency complies with sections 69-2401, 69-2403 to 69-2408, and 69-2409.01.

Source: Laws 1991, LB 355, § 4; Laws 1996, LB 1055, § 3; Laws 2006, LB 1227, § 3.

69-2406 Certificate; denial or revocation; appeal; filing fee.

Any person who is denied a certificate, whose certificate is revoked, or who has not been issued a certificate upon expiration of the three-day period may appeal within ten days of receipt of the denial or revocation to the county court of the county of the applicant's place of residence. The applicant shall file with the court the specific reasons for the denial or revocation by the chief of police

or sheriff and a filing fee of ten dollars in lieu of any other filing fee required by law. The court shall issue its decision within thirty days of the filing of the appeal.

Source: Laws 1991, LB 355, § 5; Laws 2006, LB 1227, § 4.

69-2407 Certificate; contents; term; revocation.

A certificate issued in accordance with section 69-2404 shall contain the holder's name, address, and date of birth and the effective date of the certificate. A certificate shall authorize the holder to acquire any number of handguns during the period that the certificate is valid. The certificate shall be valid throughout the state and shall become invalid three years after its effective date. If the chief of police or sheriff who issued the certificate determines that the applicant has become disqualified for the certificate under section 69-2404, he or she may immediately revoke the certificate and require the holder to surrender the certificate immediately. Revocation may be appealed pursuant to section 69-2406.

Source: Laws 1991, LB 355, § 6; Laws 2009, LB63, § 34.

69-2408 False information on application; other violations; penalties; confiscation of handgun.

Any person who willfully provides false information on an application form for a certificate under section 69-2404 shall, upon conviction, be guilty of a Class IV felony, and any person who intentionally violates any other provision of sections 69-2401, 69-2403 to 69-2407, and 69-2409.01 shall, upon conviction, be guilty of a Class I misdemeanor. As a part of the judgment of conviction, the court may order the confiscation of the handgun.

Source: Laws 1991, LB 355, § 7; Laws 1996, LB 1055, § 4.

69-2409 Automated criminal history files; legislative intent; system implementation; Nebraska State Patrol; superintendent; duties; purchase, lease, rental, or transfer; election.

(1) It is the intent of the Legislature that the Nebraska State Patrol implement an expedited program of upgrading Nebraska's automated criminal history files to be utilized for, among other law enforcement purposes, an instant criminal history record check on handgun purchasers when buying a handgun from a licensed importer, manufacturer, or dealer so that such instant criminal history record check may be implemented as soon as possible on or after January 1, 1995.

(2) The patrol's automated arrest and conviction records shall be reviewed annually by the Superintendent of Law Enforcement and Public Safety who shall report the status of such records within thirty days of such review to the Governor and the Clerk of the Legislature. The report submitted to the Clerk of the Legislature shall be submitted electronically. The instant criminal history record check system shall be implemented by the patrol on or after January 1, 1995, when, as determined by the Superintendent of Law Enforcement and Public Safety, eighty-five percent of the Nebraska arrest and conviction records since January 1, 1965, available to the patrol are included in the patrol's automated system. Not less than thirty days prior to implementation and enforcement of the instant check system, the patrol shall send written notice to

all licensed importers, manufacturers, and dealers outlining the procedures and toll-free number described in sections 69-2410 to 69-2423.

(3) Upon implementation of the instant criminal history record check system, a person who desires to purchase, lease, rent, or receive transfer of a handgun from a licensed importer, manufacturer, or dealer may elect to obtain such handgun either under sections 69-2401, 69-2403 to 69-2408, and 69-2409.01 or under sections 69-2409.01 and 69-2410 to 69-2423.

Source: Laws 1991, LB 355, § 8; Laws 1996, LB 1055, § 5; Laws 2012, LB782, § 99.

69-2409.01 Data base; created; disclosure; limitation; liability; prohibited act; violation; penalty; report; contents.

(1) For purposes of sections 69-2401 to 69-2425, the Nebraska State Patrol shall be furnished with only such information as may be necessary for the sole purpose of determining whether an individual is disqualified from purchasing or possessing a handgun pursuant to state law or is subject to the disability provisions of 18 U.S.C. 922(d)(4) and (g)(4). Such information shall be furnished by the Department of Health and Human Services. The clerks of the various courts shall furnish to the Department of Health and Human Services and Nebraska State Patrol, as soon as practicable but within thirty days after an order of commitment or discharge is issued or after removal of firearm-related disabilities pursuant to section 71-963, all information necessary to set up and maintain the data base required by this section. This information shall include (a) information regarding those persons who are currently receiving mental health treatment pursuant to a commitment order of a mental health board or who have been discharged, (b) information regarding those persons who have been committed to treatment pursuant to section 29-3702, and (c) information regarding those persons who have had firearm-related disabilities removed pursuant to section 71-963. The mental health board shall notify the Department of Health and Human Services and the Nebraska State Patrol when such disabilities have been removed. The Department of Health and Human Services shall also maintain in the data base a listing of persons committed to treatment pursuant to section 29-3702. To ensure the accuracy of the data base, any information maintained or disclosed under this subsection shall be updated, corrected, modified, or removed, as appropriate, and as soon as practicable, from any data base that the state or federal government maintains and makes available to the National Instant Criminal Background Check System. The procedures for furnishing the information shall guarantee that no information is released beyond what is necessary for purposes of this section.

(2) In order to comply with sections 69-2401 and 69-2403 to 69-2408 and this section, the Nebraska State Patrol shall provide to the chief of police or sheriff of an applicant's place of residence or a licensee in the process of a criminal history record check pursuant to section 69-2411 only the information regarding whether or not the applicant is disqualified from purchasing or possessing a handgun.

(3) Any person, agency, or mental health board participating in good faith in the reporting or disclosure of records and communications under this section is immune from any liability, civil, criminal, or otherwise, that might result by reason of the action.

(4) Any person who intentionally causes the Nebraska State Patrol to request information pursuant to this section without reasonable belief that the named individual has submitted a written application under section 69-2404 or has completed a consent form under section 69-2410 shall be guilty of a Class II misdemeanor in addition to other civil or criminal liability under state or federal law.

(5) The Nebraska State Patrol and the Department of Health and Human Services shall report electronically to the Clerk of the Legislature on a biannual basis the following information about the data base: (a) The number of total records of persons unable to purchase or possess firearms because of disqualification or disability shared with the National Instant Criminal Background Check System; (b) the number of shared records by category of such persons; (c) the change in number of total shared records and change in number of records by category from the previous six months; (d) the number of records existing but not able to be shared with the National Instant Criminal Background Check System because the record was incomplete and unable to be accepted by the National Instant Criminal Background Check System; and (e) the number of hours or days, if any, during which the data base was unable to share records with the National Instant Criminal Background Check System and the reason for such inability. The report shall also be published on the web sites of the Nebraska State Patrol and the Department of Health and Human Services.

Source: Laws 1996, LB 1055, § 1; Laws 1997, LB 307, § 112; Laws 2011, LB512, § 3; Laws 2014, LB699, § 6.

69-2410 Importer, manufacturer, or dealer; sale or delivery; duties.

No importer, manufacturer, or dealer licensed pursuant to 18 U.S.C. 923 shall sell or deliver any handgun to another person other than a licensed importer, manufacturer, dealer, or collector until he or she has:

(1)(a) Inspected a valid certificate issued to such person pursuant to sections 69-2401, 69-2403 to 69-2408, and 69-2409.01; and

(b) Inspected a valid identification containing a photograph of such person which appropriately and completely identifies such person; or

(2)(a) Obtained a completed consent form from the potential buyer or transferee, which form shall be established by the Nebraska State Patrol and provided by the licensed importer, manufacturer, or dealer. The form shall include the name, address, date of birth, gender, race, and country of citizenship of such potential buyer or transferee. If the potential buyer or transferee is not a United States citizen, the completed consent form shall contain the potential buyer's or transferee's place of birth and his or her alien or admission number;

(b) Inspected a valid identification containing a photograph of the potential buyer or transferee which appropriately and completely identifies such person;

(c) Requested by toll-free telephone call or other electromagnetic communication that the Nebraska State Patrol conduct a criminal history record check; and

(d) Received a unique approval number for such inquiry from the Nebraska State Patrol indicating the date and number on the consent form.

Source: Laws 1991, LB 355, § 9; Laws 1996, LB 1055, § 6; Laws 2006, LB 1227, § 5; Laws 2009, LB63, § 35.

69-2411 Request for criminal history record check; Nebraska State Patrol; duties; fee.

(1) Upon receipt of a request for a criminal history record check, the Nebraska State Patrol shall as soon as possible during the licensee's telephone call or by return telephone call:

(a) Check its criminal history records and check the Federal Bureau of Investigation's National Instant Criminal Background Check System to determine if the potential buyer or transferee is prohibited from receipt or possession of a handgun pursuant to state or federal law; and

(b) Either (i) inform the licensee that its records demonstrate that the potential buyer or transferee is prohibited from receipt or possession of a handgun or (ii) provide the licensee with a unique approval number.

(2) In the event of electronic failure or similar emergency beyond the control of the Nebraska State Patrol, the patrol shall immediately notify a requesting licensee of the reason for and estimated length of such delay. In any event, no later than the end of the next business day the Nebraska State Patrol shall either (a) inform the licensee that its records demonstrate that the potential buyer or transferee is prohibited from receipt or possession of a handgun or (b) provide the licensee with a unique approval number. If the licensee is not informed by the end of the next business day that the potential buyer is prohibited from receipt or possession of a handgun, and regardless of whether the unique approval number has been received, the licensee may complete the sale or delivery and shall not be deemed to be in violation of sections 69-2410 to 69-2423 with respect to such sale or delivery.

(3) A fee of three dollars shall be charged for each request of a criminal history record check required pursuant to section 69-2410, which amount shall be transmitted monthly to the Nebraska State Patrol. Such amount shall be for the purpose of covering the costs of the criminal history record check.

Source: Laws 1991, LB 355, § 10; Laws 2006, LB 1227, § 6.

69-2412 Records; confidentiality; destruction.

(1) Any records which are created by the Nebraska State Patrol to conduct the criminal history record check containing any of the information set forth in subdivision (2)(a) of section 69-2410 pertaining to a potential buyer or transferee who is not prohibited from receipt or transfer of a handgun by reason of state or federal law shall be confidential and may not be disclosed by the patrol or any officer or employee thereof to any person. The Nebraska State Patrol shall destroy any such records as soon as possible after communicating the unique approval number, and in any event, such records shall be destroyed within forty-eight hours after the date of receipt of the licensee's request.

(2) Notwithstanding the provisions of this section, the Nebraska State Patrol shall only maintain a log of dates of requests for criminal history record checks and unique approval numbers corresponding to such dates for not to exceed one year.

(3) Nothing in this section shall be construed to allow the state to maintain records containing the names of licensees who receive unique approval numbers or to maintain records of handgun transactions, including the names or other identification of licensees and potential buyers or transferees including persons not otherwise prohibited by law from the receipt or possession of handguns.

Source: Laws 1991, LB 355, § 11.

69-2413 Nebraska State Patrol; toll-free telephone number; personnel.

The Nebraska State Patrol shall establish a toll-free telephone number which shall be operational seven days a week between 8 a.m. and 10 p.m. for purposes of responding to requests under section 69-2410. The Nebraska State Patrol shall employ and train such personnel as is necessary to expeditiously administer the provisions of sections 69-2410 to 69-2423.

Source: Laws 1991, LB 355, § 12.

69-2414 Records; amendment; procedure.

Any person who is denied the right to purchase or receive a handgun as a result of procedures established by sections 69-2410 to 69-2423 may request amendment of the record pertaining to him or her by petitioning the Nebraska State Patrol. If the Nebraska State Patrol fails to amend the record within seven days, the person requesting the amendment may petition the county court of the county in which he or she resides for an order directing the patrol to amend the record. If the person proves by a preponderance of the evidence that the record should be amended, the court shall order the record be amended. If the record demonstrates that such person is not prohibited from receipt or possession of a handgun by state or federal law, the Nebraska State Patrol shall destroy any records it maintains which contain any information derived from the criminal history record check.

Source: Laws 1991, LB 355, § 13.

69-2415 Records; rules and regulations.

The Nebraska State Patrol shall adopt and promulgate rules and regulations to ensure the identity, confidentiality, and security of all records and data provided pursuant to sections 69-2410 to 69-2423.

Source: Laws 1991, LB 355, § 14.

69-2416 Licensed importer, manufacturer, or dealer; compliance not required; when.

A licensed importer, manufacturer, or dealer shall not be required to comply with the provisions of subdivision (2) of section 69-2410 and sections 69-2411 to 69-2423 in the event of:

(1) Unavailability of telephone service at the licensed premises due to (a) the failure of the entity which provides telephone service in the state, region, or other geographical area in which the licensee is located to provide telephone service to the premises due to the location of such premises or (b) the interruption of telephone service by reason of hurricane, flood, natural disaster, other act of God, war, riot, or other bona fide emergency or reason beyond the control of the licensee; or

(2) Failure of the Nebraska State Patrol to comply reasonably with the requirements of sections 69-2410 to 69-2423.

Source: Laws 1991, LB 355, § 15.

69-2417 Nebraska State Patrol; licensee; liability defense; when.

Compliance with sections 69-2410 to 69-2423 shall be a defense by the Nebraska State Patrol and the licensee transferring a handgun in any cause of action under the laws of this state for liability for damages arising from the importation or manufacture, or the subsequent sale or transfer, of any handgun which has been shipped or transported in interstate or foreign commerce to any person who has been convicted in any court of any crime punishable by a term of more than one year.

Source: Laws 1991, LB 355, § 16.

69-2418 Instant criminal history record check; requirements; exemptions.

Sections 69-2410 to 69-2423 shall not apply to:

- (1) Any antique handgun or pistol; or
- (2) Any firearm which is a curio or relic as defined in 27 C.F.R. 478.11.

Source: Laws 1991, LB 355, § 17; Laws 2006, LB 1227, § 7.

69-2419 Criminal history records; prohibited acts; violation; penalty.

Any licensed importer, manufacturer, or dealer who knowingly and intentionally requests a criminal history record check from the Nebraska State Patrol for any purpose other than compliance with sections 69-2410 to 69-2423 or knowingly and intentionally disseminates any criminal history record check information to any person other than the subject of such information shall be guilty of a Class I misdemeanor.

Source: Laws 1991, LB 355, § 18; Laws 2006, LB 1227, § 8.

69-2420 False statement; false identification; prohibited acts; violation; penalty.

Any person who, in connection with the purchase, transfer, or attempted purchase of a handgun pursuant to sections 69-2410 to 69-2423, knowingly and intentionally makes any materially false oral or written statement or knowingly and intentionally furnishes any false identification intended or likely to deceive the licensee shall be guilty of a Class IV felony.

Source: Laws 1991, LB 355, § 19.

69-2421 Sale or delivery; violation; penalty.

Any licensed importer, manufacturer, or dealer who knowingly and intentionally sells or delivers a handgun in violation of sections 69-2401 to 69-2425 shall be guilty of a Class IV felony.

Source: Laws 1991, LB 355, § 20; Laws 1996, LB 1055, § 7.

69-2422 Obtaining handgun for prohibited transfer; violation; penalty.

For purposes of sections 69-2401 to 69-2425, any person who knowingly and intentionally obtains a handgun for the purposes of transferring it to a person

who is prohibited from receipt or possession of a handgun by state or federal law shall be guilty of a Class IV felony.

Source: Laws 1991, LB 355, § 21; Laws 1996, LB 1055, § 8.

69-2423 Nebraska State Patrol; annual report; contents.

The Nebraska State Patrol shall provide electronically an annual report to the Judiciary Committee of the Legislature which includes the number of inquiries made pursuant to sections 69-2410 to 69-2423 for the prior calendar year, the number of such inquiries resulting in a determination that the potential buyer or transferee was prohibited from receipt or possession of a handgun pursuant to state or federal law, the estimated costs of administering such sections, the number of instances in which a person requested amendment of the record pertaining to such person pursuant to section 69-2414, and the number of instances in which a county court issued an order directing the patrol to amend a record.

Source: Laws 1991, LB 355, § 22; Laws 2012, LB782, § 100.

69-2424 Rules and regulations.

The Nebraska State Patrol shall adopt and promulgate rules and regulations to carry out sections 69-2401 to 69-2425.

Source: Laws 1991, LB 355, § 23; Laws 1996, LB 1055, § 9.

69-2425 City or village ordinance; not preempted.

Any city or village ordinance existing on September 6, 1991, shall not be preempted by sections 69-2401 to 69-2425.

Source: Laws 1991, LB 355, § 24; Laws 1996, LB 1055, § 10.

(b) FIREARM INFORMATION

69-2426 Dealers of firearms; distribution of information; Firearm Information Fund; created.

(1) Dealers of firearms shall distribute to all purchasers information developed by the Department of Health and Human Services regarding the dangers of leaving loaded firearms unattended around children.

(2) There is hereby created the Firearm Information Fund. Private contributions shall be credited by the State Treasurer to such fund for the implementation of the provisions of this section.

Source: Laws 1993, LB 117, § 1; Laws 1996, LB 1044, § 367.

(c) CONCEALED HANDGUN PERMIT ACT

69-2427 Act, how cited.

Sections 69-2427 to 69-2449 shall be known and may be cited as the Concealed Handgun Permit Act.

Source: Laws 2006, LB 454, § 1; Laws 2009, LB430, § 9; Laws 2010, LB817, § 5.

69-2428 Permit to carry concealed handgun; authorized.

An individual may obtain a permit to carry a concealed handgun in accordance with the Concealed Handgun Permit Act.

Source: Laws 2006, LB 454, § 2.

69-2429 Terms, defined.

For purposes of the Concealed Handgun Permit Act:

(1) Concealed handgun means the handgun is totally hidden from view. If any part of the handgun is capable of being seen, it is not a concealed handgun;

(2) Emergency services personnel means a volunteer or paid firefighter or rescue squad member or a person licensed to provide emergency medical services pursuant to the Emergency Medical Services Practice Act or authorized to provide emergency medical services pursuant to the EMS Personnel Licensure Interstate Compact;

(3) Handgun means any firearm with a barrel less than sixteen inches in length or any firearm designed to be held and fired by the use of a single hand;

(4) Peace officer means any town marshal, chief of police or local police officer, sheriff or deputy sheriff, the Superintendent of Law Enforcement and Public Safety, any officer of the Nebraska State Patrol, any member of the National Guard on active service by direction of the Governor during periods of emergency or civil disorder, any Game and Parks Commission conservation officer, and all other persons with similar authority to make arrests;

(5) Permitholder means an individual holding a current and valid permit to carry a concealed handgun issued pursuant to the Concealed Handgun Permit Act; and

(6) Proof of training means an original document or certified copy of a document, supplied by an applicant, that certifies that he or she either:

(a) Within the previous three years, has successfully completed a handgun training and safety course approved by the Nebraska State Patrol pursuant to section 69-2432; or

(b) Is a member of the active or reserve armed forces of the United States or a member of the National Guard and has had handgun training within the previous three years which meets the minimum safety and training requirements of section 69-2432.

Source: Laws 2006, LB 454, § 3; Laws 2007, LB463, § 1177; Laws 2018, LB1034, § 49.

Effective date July 19, 2018.

Cross References

Emergency Medical Services Practice Act, see section 38-1201.

EMS Personnel Licensure Interstate Compact, see section 38-3801.

69-2430 Application; form; contents; prohibited acts; penalty; permit issuance; denial; appeal.

(1) Application for a permit to carry a concealed handgun shall be made in person at any Nebraska State Patrol Troop Headquarters or office provided by the patrol for purposes of accepting such an application. The applicant shall present a current Nebraska motor vehicle operator's license, Nebraska-issued state identification card, or military identification card and shall submit two legible sets of fingerprints for a criminal history record information check

pursuant to section 69-2431. The application shall be made on a form prescribed by the Superintendent of Law Enforcement and Public Safety. The application shall state the applicant's full name, motor vehicle operator's license number or state identification card number, address, and date of birth and contain the applicant's signature and shall include space for the applicant to affirm that he or she meets each and every one of the requirements set forth in section 69-2433. The applicant shall attach to the application proof of training and proof of vision as required in subdivision (3) of section 69-2433.

(2) A person applying for a permit to carry a concealed handgun who gives false information or offers false evidence of his or her identity is guilty of a Class IV felony.

(3)(a) Until January 1, 2010, the permit to carry a concealed handgun shall be issued by the Nebraska State Patrol within five business days after completion of the applicant's criminal history record information check, if the applicant has complied with this section and has met all the requirements of section 69-2433.

(b) Beginning January 1, 2010, the permit to carry a concealed handgun shall be issued by the Nebraska State Patrol within forty-five days after the date an application for the permit has been made by the applicant if the applicant has complied with this section and has met all the requirements of section 69-2433.

(4) An applicant denied a permit to carry a concealed handgun may appeal to the district court of the judicial district of the county in which he or she resides or the county in which he or she applied for the permit pursuant to the Administrative Procedure Act.

Source: Laws 2006, LB 454, § 4; Laws 2009, LB63, § 36; Laws 2009, LB430, § 10.

Cross References

Administrative Procedure Act, see section 84-920.

69-2431 Fingerprinting; criminal history record information check.

In order to insure an applicant's initial compliance with sections 69-2430 and 69-2433, the applicant for a permit to carry a concealed handgun shall be fingerprinted by the Nebraska State Patrol and a check made of his or her criminal history record information maintained by the Federal Bureau of Investigation through the Nebraska State Patrol. In order to insure continuing compliance with sections 69-2430 and 69-2433 and compliance for renewal pursuant to section 69-2436, a check shall be made of a permit holder's criminal history record information through the National Instant Criminal Background Check System.

Source: Laws 2006, LB 454, § 5; Laws 2010, LB817, § 7.

69-2432 Nebraska State Patrol; handgun training and safety courses and instructors; duties; certificate of completion of course; fee.

(1) The Nebraska State Patrol shall prepare and publish minimum training and safety requirements for and adopt and promulgate rules and regulations governing handgun training and safety courses and handgun training and safety course instructors. Minimum safety and training requirements for a handgun training and safety course shall include, but not be limited to:

(a) Knowledge and safe handling of a handgun;

- (b) Knowledge and safe handling of handgun ammunition;
 - (c) Safe handgun shooting fundamentals;
 - (d) A demonstration of competency with a handgun with respect to the minimum safety and training requirements;
 - (e) Knowledge of federal, state, and local laws pertaining to the purchase, ownership, transportation, and possession of handguns;
 - (f) Knowledge of federal, state, and local laws pertaining to the use of a handgun, including, but not limited to, use of a handgun for self-defense and laws relating to justifiable homicide and the various degrees of assault;
 - (g) Knowledge of ways to avoid a criminal attack and to defuse or control a violent confrontation; and
 - (h) Knowledge of proper storage practices for handguns and ammunition, including storage practices which would reduce the possibility of accidental injury to a child.
- (2) A person or entity conducting a handgun training and safety course and the course instructors shall be approved by the patrol before operation. The patrol shall issue a certificate evidencing its approval.
- (3) A certificate of completion of a handgun training and safety course shall be issued by the person or entity conducting a handgun training and safety course to persons successfully completing the course. The certificate of completion shall also include certification from the instructor that the person completing the course does not suffer from a readily discernible physical infirmity that prevents the person from safely handling a handgun.
- (4) Any fee for participation in a handgun training and safety course is the responsibility of the applicant.

Source: Laws 2006, LB 454, § 6.

69-2433 Applicant; requirements.

An applicant shall:

- (1) Be at least twenty-one years of age;
- (2) Not be prohibited from purchasing or possessing a handgun by 18 U.S.C. 922, as such section existed on January 1, 2005;
- (3) Possess the same powers of eyesight as required under section 60-4,118 for a Class O operator's license. If an applicant does not possess a current Nebraska motor vehicle operator's license, the applicant may present a current optometrist's or ophthalmologist's statement certifying the vision reading obtained when testing the applicant. If such certified vision reading meets the vision requirements prescribed by section 60-4,118 for a Class O operator's license, the vision requirements of this subdivision shall have been met;
- (4) Not have been convicted of a felony under the laws of this state or under the laws of any other jurisdiction;
- (5) Not have been convicted of a misdemeanor crime of violence under the laws of this state or under the laws of any other jurisdiction within the ten years immediately preceding the date of application;
- (6) Not have been found in the previous ten years to be a mentally ill and dangerous person under the Nebraska Mental Health Commitment Act or a

similar law of another jurisdiction or not be currently adjudged mentally incompetent;

(7)(a) Have been a resident of this state for at least one hundred eighty days. For purposes of this section, resident does not include an applicant who maintains a residence in another state and claims that residence for voting or tax purposes except as provided in subdivision (b) or (c) of this subdivision;

(b) If an applicant is a member of the United States Armed Forces, such applicant shall be considered a resident of this state for purposes of this section after he or she has been stationed at a military installation in this state pursuant to permanent duty station orders even though he or she maintains a residence in another state and claims that residence for voting or tax purposes. The spouse of such applicant shall also be considered a resident of this state for purposes of this section, as shall a person receiving the benefits of a spouse of a member of the United States Armed Forces under the law of the United States; or

(c) If an applicant is a new Nebraska resident and possesses a valid permit to carry a concealed handgun issued by his or her previous state of residence that is recognized by this state pursuant to section 69-2448, such applicant shall be considered a resident of this state for purposes of this section;

(8) Not have had a conviction of any law of this state relating to firearms, unlawful use of a weapon, or controlled substances or of any similar laws of another jurisdiction within the ten years preceding the date of application. This subdivision does not apply to any conviction under Chapter 37 or under any similar law of another jurisdiction, except for a conviction under section 37-509, 37-513, or 37-522 or under any similar law of another jurisdiction;

(9) Not be on parole, probation, house arrest, or work release; and

(10) Provide proof of training.

Source: Laws 2006, LB 454, § 7; Laws 2009, LB430, § 11; Laws 2010, LB817, § 8; Laws 2011, LB512, § 4; Laws 2012, LB807, § 2; Laws 2016, LB190, § 1.

Cross References

Nebraska Mental Health Commitment Act, see section 71-901.

The obvious purpose of this section is to prevent people with a demonstrated propensity to commit crimes, including crimes involving acts of violence, from carrying concealed weapons so as to minimize the risk of future gun violence. An attempt to

commit a crime is indicative of future behavior, and in the context of subdivision (5) of this section, the attempt itself is an act of violence. *Underwood v. Nebraska State Patrol*, 287 Neb. 204, 842 N.W.2d 57 (2014).

69-2434 Permit; design and form.

The design and form of the permit to carry a concealed handgun shall be prescribed by the Nebraska State Patrol. The permit shall list the permitholder's name, the permitholder's address, and the expiration date of the permit and contain a photograph of the permitholder.

Source: Laws 2006, LB 454, § 8.

69-2435 Permitholder; continuing requirements; return of permit; when.

A permitholder shall continue to meet the requirements of section 69-2433 during the time he or she holds the permit, except as provided in subsection (4) of section 69-2443. If, during such time, a permitholder does not continue to meet one or more of the requirements, the permitholder shall return his or her

permit to the Nebraska State Patrol for revocation. If a permitholder does not return his or her permit, the permitholder is subject to having his or her permit revoked under section 69-2439.

Source: Laws 2006, LB 454, § 9; Laws 2012, LB807, § 3.

69-2436 Permit; period valid; fee; renewal; fee.

(1) A permit to carry a concealed handgun is valid throughout the state for a period of five years after the date of issuance. The fee for issuing a permit is one hundred dollars.

(2) The Nebraska State Patrol shall renew a person's permit to carry a concealed handgun for a renewal period of five years, subject to continuing compliance with the requirements of section 69-2433, except as provided in subsection (4) of section 69-2443. The renewal fee is fifty dollars, and renewal may be applied for up to four months before expiration of a permit to carry a concealed handgun.

(3) The applicant shall submit the fee with the application to the Nebraska State Patrol. The fee shall be remitted to the State Treasurer for credit to the Nebraska State Patrol Cash Fund.

(4) On or before June 30, 2007, the Nebraska State Patrol shall journal entry, as necessary, all current fiscal year expenses and revenue, including investment income, from the Public Safety Cash Fund under the Concealed Handgun Permit Act and recode them against the Nebraska State Patrol Cash Fund and its program appropriation.

Source: Laws 2006, LB 454, § 10; Laws 2007, LB322, § 17; Laws 2012, LB807, § 4.

69-2437 Permit; nontransferable.

A permit to carry a concealed handgun shall be issued to a specific individual only and shall not be transferred from one person to another.

Source: Laws 2006, LB 454, § 11.

69-2438 Limitation on liability.

The Nebraska State Patrol or any agent, employee, or member thereof is not civilly liable to any injured person or his or her estate for any injury suffered, including any action for wrongful death or property damage suffered, relating to the issuance or revocation of a permit to carry a concealed handgun issued pursuant to the Concealed Handgun Permit Act.

Source: Laws 2006, LB 454, § 12.

69-2439 Permit; application for revocation; prosecution; fine; costs.

(1) Any peace officer having probable cause to believe that a permitholder is no longer in compliance with one or more requirements of section 69-2433, except as provided in subsection (4) of section 69-2443, shall bring an application for revocation of the permit to be prosecuted as provided in subsection (2) of this section.

(2) It is the duty of the county attorney or his or her deputy of the county in which such permitholder resides to prosecute a case for the revocation of a permit to carry a concealed handgun brought pursuant to subsection (1) of this

section. In case the county attorney refuses or is unable to prosecute the case, the duty to prosecute shall be upon the Attorney General or his or her assistant.

(3) The case shall be prosecuted as a civil case, and the permit shall be revoked upon a showing by a preponderance of the evidence that the permit-holder does not meet one or more of the requirements of section 69-2433, except as provided in subsection (4) of section 69-2443.

(4) A person who has his or her permit revoked under this section may be fined up to one thousand dollars and shall be charged with the costs of the prosecution. The money collected under this subsection as an administrative fine shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2006, LB 454, § 13; Laws 2012, LB807, § 5.

69-2440 Permitholder; duties; contact with peace officer or emergency services personnel; procedures for securing handgun.

(1) A permitholder shall carry his or her permit to carry a concealed handgun and his or her Nebraska driver's license, Nebraska-issued state identification card, or military identification card any time he or she carries a concealed handgun. The permitholder shall display both the permit to carry a concealed handgun and his or her Nebraska motor vehicle operator's license, Nebraska-issued state identification card, or military identification card when asked to do so by a peace officer or by emergency services personnel.

(2) Whenever a permitholder who is carrying a concealed handgun is contacted by a peace officer or by emergency services personnel, the permitholder shall immediately inform the peace officer or emergency services personnel that the permitholder is carrying a concealed handgun.

(3)(a) During contact with a permitholder, a peace officer or emergency services personnel may secure the handgun or direct that it be secured during the duration of the contact if the peace officer or emergency services personnel determines that it is necessary for the safety of any person present, including the peace officer or emergency services personnel. The permitholder shall submit to the order to secure the handgun.

(b)(i) When the peace officer has determined that the permitholder is not a threat to the safety of any person present, including the peace officer, and the permitholder has not committed any other violation that would result in his or her arrest or the suspension or revocation of his or her permit, the peace officer shall return the handgun to the permitholder before releasing the permitholder from the scene and breaking contact.

(ii) When emergency services personnel have determined that the permitholder is not a threat to the safety of any person present, including emergency services personnel, and if the permitholder is physically and mentally capable of possessing the handgun, the emergency services personnel shall return the handgun to the permitholder before releasing the permitholder from the scene and breaking contact. If the permitholder is transported for treatment to another location, the handgun shall be turned over to any peace officer. The peace officer shall provide a receipt which includes the make, model, caliber, and serial number of the handgun.

(4) For purposes of this section, contact with a peace officer means any time a peace officer personally stops, detains, questions, or addresses a permitholder

for an official purpose or in the course of his or her official duties, and contact with emergency services personnel means any time emergency services personnel provide treatment to a permitholder in the course of their official duties.

Source: Laws 2006, LB 454, § 14.

69-2441 Permitholder; locations; restrictions; posting of prohibition; consumption of alcohol; prohibited.

(1)(a) A permitholder may carry a concealed handgun anywhere in Nebraska, except any: Police, sheriff, or Nebraska State Patrol station or office; detention facility, prison, or jail; courtroom or building which contains a courtroom; polling place during a bona fide election; meeting of the governing body of a county, public school district, municipality, or other political subdivision; meeting of the Legislature or a committee of the Legislature; financial institution; professional or semiprofessional athletic event; building, grounds, vehicle, or sponsored activity or athletic event of any public, private, denominational, or parochial elementary, vocational, or secondary school, a private postsecondary career school as defined in section 85-1603, a community college, or a public or private college, junior college, or university; place of worship; hospital, emergency room, or trauma center; political rally or fundraiser; establishment having a license issued under the Nebraska Liquor Control Act that derives over one-half of its total income from the sale of alcoholic liquor; place where the possession or carrying of a firearm is prohibited by state or federal law; a place or premises where the person, persons, entity, or entities in control of the property or employer in control of the property has prohibited permitholders from carrying concealed handguns into or onto the place or premises; or into or onto any other place or premises where handguns are prohibited by state law.

(b) A financial institution may authorize its security personnel to carry concealed handguns in the financial institution while on duty so long as each member of the security personnel, as authorized, is in compliance with the Concealed Handgun Permit Act and possesses a permit to carry a concealed handgun issued pursuant to the act.

(c) A place of worship may authorize its security personnel to carry concealed handguns on its property so long as each member of the security personnel, as authorized, is in compliance with the Concealed Handgun Permit Act and possesses a permit to carry a concealed handgun issued pursuant to the act and written notice is given to the congregation and, if the property is leased, the carrying of concealed handguns on the property does not violate the terms of any real property lease agreement between the place of worship and the lessor.

(2) If a person, persons, entity, or entities in control of the property or an employer in control of the property prohibits a permitholder from carrying a concealed handgun into or onto the place or premises and such place or premises are open to the public, a permitholder does not violate this section unless the person, persons, entity, or entities in control of the property or employer in control of the property has posted conspicuous notice that carrying a concealed handgun is prohibited in or on the place or premises or has made a request, directly or through an authorized representative or management personnel, that the permitholder remove the concealed handgun from the place or premises.

(3) A permit holder carrying a concealed handgun in a vehicle or on his or her person while riding in or on a vehicle into or onto any parking area, which is open to the public, used by any location listed in subdivision (1)(a) of this section, does not violate this section if, prior to exiting the vehicle, the handgun is locked inside the glove box, trunk, or other compartment of the vehicle, a storage box securely attached to the vehicle, or, if the vehicle is a motorcycle, other than an autocyte, a hardened compartment securely attached to the motorcycle. This subsection does not apply to any parking area used by such location when the carrying of a concealed handgun into or onto such parking area is prohibited by federal law.

(4) An employer may prohibit employees or other persons who are permit holders from carrying concealed handguns in vehicles owned by the employer.

(5) A permit holder shall not carry a concealed handgun while he or she is consuming alcohol or while the permit holder has remaining in his or her blood, urine, or breath any previously consumed alcohol or any controlled substance as defined in section 28-401. A permit holder does not violate this subsection if the controlled substance in his or her blood, urine, or breath was lawfully obtained and was taken in therapeutically prescribed amounts.

Source: Laws 2006, LB 454, § 15; Laws 2007, LB97, § 1; Laws 2009, LB430, § 12; Laws 2018, LB909, § 120.
Effective date April 12, 2018.

Cross References

Nebraska Liquor Control Act, see section 53-101.

69-2442 Injury to person or damage to property; permit holder; report required.

Any time the discharge of a handgun carried by a permit holder pursuant to the Concealed Handgun Permit Act results in injury to a person or damage to property, the permit holder shall make a report of such incident to the Nebraska State Patrol on a form designed and distributed by the Nebraska State Patrol. The information from the report shall be maintained as provided in section 69-2444.

Source: Laws 2006, LB 454, § 16.

69-2443 Violations; penalties; revocation of permit.

(1) A permit holder who violates subsection (1) or (2) of section 69-2440 or section 69-2441 or 69-2442 is guilty of a Class III misdemeanor for the first violation and a Class I misdemeanor for any second or subsequent violation.

(2) A permit holder who violates subsection (3) of section 69-2440 is guilty of a Class I misdemeanor.

(3) A permit holder convicted of a violation of section 69-2440 or 69-2442 may also have his or her permit revoked.

(4) A permit holder convicted of a violation of section 69-2441 that occurred on property owned by the state or any political subdivision of the state may also have his or her permit revoked. A permit holder convicted of a violation of section 69-2441 that did not occur on property owned by the state or any political subdivision of the state shall not have his or her permit revoked for a

first offense but may have his or her permit revoked for any second or subsequent offense.

Source: Laws 2006, LB 454, § 17; Laws 2007, LB97, § 2; Laws 2012, LB807, § 6.

69-2444 Listing of applicants and permitholders; availability; confidential information.

The Nebraska State Patrol shall maintain a listing of all applicants and permitholders and any pertinent information regarding such applicants and permitholders. The information shall be available upon request to all federal, state, and local law enforcement agencies. Information relating to an applicant or to a permitholder received or maintained pursuant to the Concealed Handgun Permit Act by the Nebraska State Patrol or any other law enforcement agency is confidential and shall not be considered a public record within the meaning of sections 84-712 to 84-712.09.

Source: Laws 2006, LB 454, § 18.

69-2445 Carrying concealed weapon under other law; act; how construed.

Nothing in the Concealed Handgun Permit Act prevents a person from carrying a concealed weapon as permitted under section 28-1202.

Source: Laws 2006, LB 454, § 19.

69-2446 Rules and regulations.

The Nebraska State Patrol may adopt and promulgate rules and regulations to carry out the Concealed Handgun Permit Act.

Source: Laws 2006, LB 454, § 20.

69-2447 Department of Motor Vehicles records; use and update of information.

(1) The Department of Motor Vehicles shall modify the existing system of the department to allow the status of a permit to carry a concealed handgun and the dates of issuance and expiration of such permit to be recorded on the permitholder's record provided for in section 60-483. The Nebraska State Patrol shall use the system to record the issuance or renewal of a permit to carry a concealed handgun. The transmission of notice of the issuance or renewal of such permit shall include the applicant's name, the applicant's motor vehicle operator's license number or state identification card number, and the dates of issuance and expiration of the permit to carry a concealed handgun.

(2) An abstract of a court record of every case in which a person's permit to carry a concealed handgun is revoked shall be transmitted to the Department of Motor Vehicles using the abstracting system provided for in section 60-497.01. Such abstract shall contain the name of the revoked permitholder, his or her motor vehicle operator's license number or state identification card number, and the date of revocation of the permit to carry a concealed handgun.

Source: Laws 2006, LB 454, § 21.

69-2448 License or permit issued by other state or District of Columbia; how treated.

A valid license or permit to carry a concealed handgun issued by any other state or the District of Columbia shall be recognized as valid in this state under the Concealed Handgun Permit Act if (1) the holder of the license or permit is not a resident of Nebraska and (2) the Attorney General has determined that the standards for issuance of such license or permit by such state or the District of Columbia are equal to or greater than the standards imposed by the act. The Attorney General shall maintain and publish a list of such states and the District of Columbia which he or she has determined have standards equal to or greater than the standards imposed by the act.

Source: Laws 2009, LB430, § 13.

69-2449 Information to permitholder regarding lost or stolen handgun or firearm.

The Nebraska State Patrol shall inform each permitholder, upon the issuance or renewal of a permit to carry a concealed handgun, that if a handgun, or other firearm, owned by such permitholder is lost or stolen, the permitholder should notify his or her county sheriff or local police department of that fact.

Source: Laws 2010, LB817, § 6.

ARTICLE 25

PLASTIC CONTAINER CODING

Section

- 69-2501. Act, how cited.
- 69-2502. Terms, defined.
- 69-2503. Conformity with industry standards; codes required; department; duties.
- 69-2504. Violations; penalty; enforcement duties.
- 69-2505. Environmental Quality Council; adopt rules and regulations.
- 69-2506. Administrative costs; limitation; payment.
- 69-2507. Act; applicability.

69-2501 Act, how cited.

Sections 69-2501 to 69-2507 shall be known and may be cited as the Plastic Container Coding Act.

Source: Laws 1993, LB 63, § 1.

69-2502 Terms, defined.

For purposes of the Plastic Container Coding Act:

- (1) Code shall mean a molded, imprinted, or raised symbol on or near the bottom of a plastic bottle or rigid plastic container;
- (2) Department shall mean the Department of Environmental Quality;
- (3) Plastic shall mean any material made of polymeric organic compounds and additives that can be shaped by flow;
- (4) Plastic bottle shall mean a plastic container intended for a single use that:
 - (a) Has a neck smaller than the body of the container;
 - (b) Is designed for a screw-top, snap cap, or other closure; and
 - (c) Has a capacity of not less than sixteen fluid ounces or more than five gallons; and

(5) Rigid plastic container shall mean any formed or molded container intended for a single use, composed predominately of plastic resin, that has a relatively inflexible finite shape or form with a capacity of not less than eight ounces or more than five gallons. Rigid plastic container shall not include a plastic bottle.

Source: Laws 1993, LB 63, § 2.

69-2503 Conformity with industry standards; codes required; department; duties.

(1) This section and any rules or regulations adopted and promulgated under the Plastic Container Coding Act shall be interpreted to conform with nationwide plastics industry standards.

(2) No person shall manufacture or distribute a plastic bottle or rigid plastic container unless such bottle or container is imprinted with a code identifying the appropriate resin type used to produce the structure of the container. The code shall consist of a number placed within three triangulated arrows and letters placed below the triangle of arrows. The triangulated arrows shall be equilateral, formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The arrowhead of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the arrowhead from the base of the adjacent arrow. The triangle, formed by the three arrows curved at their midpoints, shall depict a clockwise path around the code number.

(3) The codes shall be:

- (a) 1 and PETE, representing polyethylene terephthalate;
- (b) 2 and HDPE, representing high density polyethylene;
- (c) 3 and V, representing vinyl;
- (d) 4 and LDPE, representing low density polyethylene;
- (e) 5 and PP, representing polypropylene;
- (f) 6 and PS, representing polystyrene; and
- (g) 7 and OTHER.

(4) The department shall maintain a list of the symbols and provide a copy of the list to any person on request.

Source: Laws 1993, LB 63, § 3.

69-2504 Violations; penalty; enforcement duties.

(1) After being notified by the department that a plastic bottle or rigid plastic container does not comply with section 69-2503 or the rules and regulations promulgated under such section, a person violating such section shall be subject to a civil penalty of fifty dollars for each violation up to a maximum of five hundred dollars and may be enjoined from further violations.

(2) For any violation of section 69-2503 or the rules and regulations promulgated under the Plastic Container Coding Act, the Attorney General or county attorney shall institute proceedings to recover the civil penalty imposed under this section.

Source: Laws 1993, LB 63, § 4.

69-2505 Environmental Quality Council; adopt rules and regulations.

The Environmental Quality Council shall adopt and promulgate rules and regulations to carry out the Plastic Container Coding Act.

Source: Laws 1993, LB 63, § 5.

69-2506 Administrative costs; limitation; payment.

Administrative costs incurred in implementing the Plastic Container Coding Act shall not exceed five thousand dollars and shall be paid solely from the Integrated Solid Waste Management Cash Fund.

Source: Laws 1993, LB 63, § 6.

69-2507 Act; applicability.

The Plastic Container Coding Act shall apply to plastic bottles and rigid plastic containers manufactured or distributed on or after January 1, 1994.

Source: Laws 1993, LB 63, § 7; Laws 2000, LB 819, § 83.

ARTICLE 26**ASSISTIVE TECHNOLOGY REGULATION ACT**

Section

- 69-2601. Act, how cited.
- 69-2602. Definitions, where found.
- 69-2603. Assistive device, defined.
- 69-2604. Assistive device dealer, defined.
- 69-2605. Assistive device lessor, defined.
- 69-2606. Collateral costs, defined.
- 69-2607. Consumer, defined.
- 69-2608. Demonstrator, defined.
- 69-2609. Major life activity, defined.
- 69-2610. Manufacturer, defined.
- 69-2611. Nonconformity, defined.
- 69-2612. Reasonable allowance for use, defined.
- 69-2613. Reasonable attempt to repair, defined.
- 69-2614. Manufacturer; express warranty; requirements.
- 69-2615. Manufacturer; consumer; assistive device lessor; duties.
- 69-2616. Returned assistive device; resale or subsequent lease; lease; enforcement.
- 69-2617. Rights and remedies.
- 69-2618. Rental assistive device reimbursement; when.
- 69-2619. Act; applicability.

69-2601 Act, how cited.

Sections 69-2601 to 69-2619 shall be known and may be cited as the Assistive Technology Regulation Act.

Source: Laws 1997, LB 802, § 1.

69-2602 Definitions, where found.

For purposes of the Assistive Technology Regulation Act, the definitions found in sections 69-2603 to 69-2613 apply.

Source: Laws 1997, LB 802, § 2.

69-2603 Assistive device, defined.

Assistive device means any device, including a demonstrator, that a consumer purchases or accepts transfer of in this state which is used for a major life activity, including, but not limited to, manual wheelchairs, motorized wheelchairs, motorized scooters, and other aides that enhance the mobility of an individual; hearing instruments, telephone communication devices for the deaf (TTY), assistive listening devices, and other aides that enhance an individual's ability to hear; voice synthesized computer modules, optical scanners, talking software, braille printers, and other devices that enhance a sight-impaired individual's ability to communicate; environmental control units; and any other assistive device that enables a person with a disability to communicate, see, hear, or maneuver.

Source: Laws 1997, LB 802, § 3; Laws 2009, LB195, § 52.

69-2604 Assistive device dealer, defined.

Assistive device dealer means a person who is in the business of selling assistive devices.

Source: Laws 1997, LB 802, § 4.

69-2605 Assistive device lessor, defined.

Assistive device lessor means a person who leases an assistive device to a consumer under a written lease or who holds the lessor's rights under a written lease.

Source: Laws 1997, LB 802, § 5.

69-2606 Collateral costs, defined.

Collateral costs means expenses incurred by an assistive device lessor or a consumer in connection with the repair of a nonconformity, including the costs of sales tax and of obtaining an alternative assistive device.

Source: Laws 1997, LB 802, § 6.

69-2607 Consumer, defined.

Consumer means any of the following:

- (1) An individual or entity purchasing an assistive device if the assistive device was purchased from an assistive device dealer or manufacturer for purposes other than resale;
- (2) An individual or entity to whom the assistive device is transferred for purposes other than resale if the transfer occurs before the expiration of an express warranty applicable to the assistive device;
- (3) An individual or entity who may enforce the warranty; or
- (4) An individual or entity who leases an assistive device from an assistive device lessor under a written lease.

Source: Laws 1997, LB 802, § 7.

69-2608 Demonstrator, defined.

Demonstrator means an assistive device used primarily for the purpose of demonstration to the public.

Source: Laws 1997, LB 802, § 8.

69-2609 Major life activity, defined.

Major life activity means a function such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Source: Laws 1997, LB 802, § 9.

69-2610 Manufacturer, defined.

Manufacturer means a person who manufactures or assembles assistive devices and agents of that person, including an importer, a distributor, a factory branch, a distributor branch, and any warrantors of the manufacturer's assistive device, but not including an assistive device dealer.

Source: Laws 1997, LB 802, § 10.

69-2611 Nonconformity, defined.

Nonconformity means a condition or defect that substantially impairs the use, value, or safety of an assistive device and that is covered by an express warranty applicable to the assistive device or to a component of the assistive device but does not include (1) a condition or defect that is the result of abuse, neglect, or unauthorized modification or alteration of the assistive device by a consumer or (2) a condition that is the result of normal use which could be resolved through fitting adjustments, cleaning, or proper care.

Source: Laws 1997, LB 802, § 11.

69-2612 Reasonable allowance for use, defined.

Reasonable allowance for use means an amount up to a maximum of the amount obtained by multiplying the total amount for which the written lease obligates the consumer by a fraction, the denominator of which is one thousand eight hundred twenty-five and the numerator of which is the number of days that the consumer used the assistive device before first reporting the nonconformity to the manufacturer, assistive device lessor, or assistive device dealer.

Source: Laws 1997, LB 802, § 12.

69-2613 Reasonable attempt to repair, defined.

Reasonable attempt to repair means within the terms of an express warranty applicable to a new assistive device:

(1) Any nonconformity within the warranty that has been repaired by the manufacturer, the assistive device lessor, or any of the manufacturer's authorized assistive device dealers on at least two previous occasions and a nonconformity continues; or

(2) The assistive device is out of service for repair for an aggregate of at least thirty cumulative days because of warranty nonconformity.

Source: Laws 1997, LB 802, § 13.

69-2614 Manufacturer; express warranty; requirements.

(1) A manufacturer who sells an assistive device to a consumer, either directly or through an assistive device dealer, shall furnish the consumer with an express warranty for the assistive device. The duration of the express warranty shall be not less than one year after first delivery of the assistive

device to the consumer. If a manufacturer fails to furnish an express warranty as required by this section, the assistive device shall be covered by an express warranty for a period of one year as if the manufacturer had furnished an express warranty to the consumer as required by this section.

(2) An express warranty does not take effect until the consumer takes possession of the new assistive device.

(3) If a new assistive device does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the assistive device lessor, or any of the manufacturer's authorized assistive device dealers and makes the assistive device available for repair before one year after first delivery of the device to a consumer, the nonconformity shall be repaired or a refund or replacement shall be made pursuant to section 69-2615.

Source: Laws 1997, LB 802, § 14.

69-2615 Manufacturer; consumer; assistive device lessor; duties.

(1) The manufacturer shall:

(a) Accept an offer to return or an offer to transfer possession of any nonconforming assistive device by a consumer. Within thirty days after such offer, the manufacturer shall provide the consumer with a comparable new assistive device or refund to the consumer and to any holder of a perfected security interest in the consumer's assistive device, as the interest may appear, the amount paid by the consumer at the point of sale, plus any finance charge and collateral costs, less a reasonable allowance for use; or

(b) Accept an offer to return or an offer to transfer possession of any nonconforming assistive device by an assistive device lessor. Within thirty days after such offer, the manufacturer shall provide the assistive device lessor with a comparable new assistive device or refund to the assistive device lessor and to any holder of a perfected security interest in the assistive device, as the interest may appear, the amount paid by the assistive device lessor at the time of purchase, plus any finance charge and collateral costs incurred by both the assistive device lessor and the consumer, and the amount paid by the consumer to date under the written lease, less a reasonable allowance for use.

(2)(a) To receive a comparable new assistive device or a refund, a consumer shall:

(i) Offer to return the assistive device having the nonconformity to its manufacturer. When the manufacturer provides a comparable new assistive device or a refund pursuant to subdivision (1)(a) of this section, the consumer shall return to the manufacturer the assistive device having the nonconformity; or

(ii) Offer to transfer possession of the assistive device having the nonconformity to the manufacturer of the assistive device. When the manufacturer provides the comparable new assistive device or a refund pursuant to subdivision (1)(a) of this section, the consumer shall return the assistive device having the nonconformity to the manufacturer along with any endorsements necessary to transfer real possession to the manufacturer.

(b) If the consumer has leased the assistive device from an assistive device lessor, the consumer shall return the assistive device having a nonconformity to the assistive device lessor. The assistive device lessor shall provide to the

consumer from the manufacturer a comparable new assistive device or a refund pursuant to subdivision (3)(b) of this section.

(3)(a) To receive a comparable new assistive device or a refund, an assistive device lessor shall:

(i) Offer to return the assistive device having the nonconformity to its manufacturer. When the manufacturer provides a comparable new assistive device or a refund pursuant to subdivision (1)(b) of this section, the assistive device lessor shall return the nonconforming assistive device to the manufacturer; or

(ii) Offer to transfer possession of the assistive device having the nonconformity to its manufacturer. When the manufacturer provides a comparable new assistive device or a refund pursuant to subdivision (1)(b) of this section, the assistive device lessor shall return the nonconforming assistive device to the manufacturer along with any endorsements necessary to transfer real possession to the manufacturer.

(b) The assistive device lessor shall refund to the consumer the amount that the consumer paid under the written lease and collateral costs paid by the consumer, less a reasonable allowance for use.

Source: Laws 1997, LB 802, § 15.

69-2616 Returned assistive device; resale or subsequent lease; lease; enforcement.

(1) No assistive device returned by a consumer or assistive device lessor in this state or in any other state may be sold or leased again in this state unless full written disclosure of the reasons for return is made to any prospective buyer or lessee.

(2) No person may enforce the lease against the consumer after the consumer receives a refund.

Source: Laws 1997, LB 802, § 16.

69-2617 Rights and remedies.

(1) The Assistive Technology Regulation Act shall not limit rights or remedies available to a consumer under any other law.

(2) Any waiver of rights by a consumer under the act shall be void.

(3) In addition to pursuing any other remedy, a consumer may bring an action to recover for any damages caused by a violation of the act. The court shall award a consumer who prevails in such an action the amount of any pecuniary loss, together with costs, disbursements, reasonable attorney's fees, and any equitable relief that the court determines is appropriate.

Source: Laws 1997, LB 802, § 17.

69-2618 Rental assistive device reimbursement; when.

(1) If an assistive device covered by a manufacturer's express warranty is tendered by a consumer to the dealer from whom it was purchased or exchanged for the repair of any nonconformity to which the warranty is applicable and at least one of the conditions described in subdivision (a) or (b) of this subsection exists, the manufacturer shall provide directly to the consum-

er for the duration of the repair period a rental assistive device reimbursement of up to twenty dollars per day. The applicable conditions are:

(a) The repair period exceeds ten working days, including the day on which the device is tendered to the dealer for repair; or

(b) The nonconformity is the same for which the assistive device has been tendered to the dealer for repair on at least two previous occasions.

(2) The provisions of this section regarding a manufacturer's duty shall apply for the period of the manufacturer's express warranty or for one year from delivery of the assistive device to the consumer, whichever period of time is longer.

Source: Laws 1997, LB 802, § 18.

69-2619 Act; applicability.

The Assistive Technology Regulation Act shall apply to assistive devices delivered after September 13, 1997, and shall in no way be applied retroactively.

Source: Laws 1997, LB 802, § 19.

ARTICLE 27

TOBACCO

Section

- 69-2701. Tobacco Enforcement Fund; created; use; investment.
- 69-2702. Tobacco product manufacturer; terms, defined.
- 69-2703. Tobacco product manufacturer; requirements to sell within the state.
- 69-2703.01. Unconstitutionality of amendatory provision; effect.
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- 69-2710.03. Rules and regulations.
- 69-2711. Conflict of laws; how treated.

69-2701 Tobacco Enforcement Fund; created; use; investment.

(1) For purposes of this section, Master Settlement Agreement means the settlement agreement (and related documents) entered into on November 23, 1998, by the state and leading United States tobacco manufacturers.

(2) The Tobacco Enforcement Fund is created. Any money received by the state from the State Enforcement Fund established as part of the Master Settlement Agreement shall be deposited into the Tobacco Enforcement Fund. The fund shall be used by the Attorney General to enforce the Master Settlement Agreement and to investigate and litigate potential violations of state tobacco laws. The Attorney General may contract with the Nebraska State Patrol and local law enforcement agencies to assist with the investigation. The contractual costs may be paid from the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1999, LB 324, § 6.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

69-2702 Tobacco product manufacturer; terms, defined.

For purposes of this section and section 69-2703:

(1) Adjusted for inflation means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement;

(2) Affiliate means a person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this subdivision, the terms owns, is owned, and ownership means ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term person means an individual, a partnership, a committee, an association, a corporation, or any other organization or group of persons;

(3) Allocable share means allocable share as that term is defined in the Master Settlement Agreement;

(4) Cigarette means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; (b) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (c) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subdivision (a) of this subdivision. The term cigarette includes roll-your-own tobacco (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition, nine-hundredths of an ounce of roll-your-own tobacco shall constitute one individual cigarette;

(5) Days means calendar days unless specified otherwise;

(6) Importer means any person in the United States to whom non-federal-excise-tax-paid cigarettes manufactured in a foreign country are shipped or consigned, any person who removes cigarettes for sale or consumption in the United States from a customs bonded manufacturing warehouse, or any person who smuggles or otherwise unlawfully brings cigarettes into the United States;

(7) Indian country means (a) all land in this state within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of this state, and (c) all Indian allotments in this state, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments;

(8) Indian tribe means any Indian tribe, band, nation, or other organized group or community that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians under the laws of the United States;

(9) Master Settlement Agreement means the settlement agreement entered into on November 23, 1998, between the state and specific United States tobacco product manufacturers and related documents to such agreement;

(10) Qualified escrow fund means an escrow arrangement with a federally or state-chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer that places such funds into escrow from using, accessing, or directing the use of the funds' principal except as consistent with subdivision (2)(b) of section 69-2703;

(11) Released claims means released claims as that term is defined in the Master Settlement Agreement;

(12) Releasing parties means releasing parties as that term is defined in the Master Settlement Agreement;

(13) Tobacco product manufacturer means an entity that after April 29, 1999, directly and not exclusively through any affiliate:

(a) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except when such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(b) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(c) Becomes a successor of an entity described in subdivision (13)(a) or (13)(b) of this section.

The term tobacco product manufacturer does not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of subdivisions (13)(a) through (13)(c) of this section; and

(14) Units sold means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, in packs required to bear a stamp pursuant to section 77-2603 or

77-2603.01 or, in the case of roll-your-own tobacco, on which a tax is due pursuant to section 77-4008.

Source: Laws 1999, LB 574, § 1; Laws 2003, LB 572, § 8; Laws 2011, LB590, § 4.

69-2703 Tobacco product manufacturer; requirements to sell within the state.

Any tobacco product manufacturer selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, after April 29, 1999, shall do one of the following:

(1) Become a participating manufacturer, as that term is defined in section II(jj) of the Master Settlement Agreement, and generally perform its financial obligations under the Master Settlement Agreement; or

(2)(a) Place into a qualified escrow fund on a quarterly basis, no later than thirty days after the end of each calendar quarter in which sales are made, the following amounts, as such amounts are adjusted for inflation:

(i) 1999: \$.0094241 per unit sold after April 29, 1999;

(ii) 2000: \$.0104712 per unit sold;

(iii) For each of the years 2001 and 2002: \$.0136125 per unit sold;

(iv) For each of the years 2003, 2004, 2005, and 2006: \$.0167539 per unit sold; and

(v) For the year 2007 and each year thereafter: \$.0188482 per unit sold.

(b) A tobacco product manufacturer that places funds into escrow pursuant to subdivision (2)(a) of this section shall receive the interest or other appreciation on such funds as earned. Such funds shall be released from escrow only under the following circumstances:

(i) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this subdivision (2)(b)(i) in the order in which they were placed into escrow and only to the extent and at the time necessary to make payments required under such judgment or settlement;

(ii) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the state in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of that Agreement including after final determination of all adjustments, that such manufacturer would have been required to make on account of such units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer;

(iii) To the extent not released from escrow under subdivision (2)(b)(i) or (2)(b)(ii) of this section, funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow; or

(iv) An Indian tribe may seek release of escrow deposited pursuant to this section on cigarettes sold on an Indian tribe's Indian country to its tribal members pursuant to an agreement entered into between the state and the Indian tribe pursuant to section 77-2602.06. Amounts the state collects on a

bond under section 69-2707.01 shall not be subject to release under this section.

(c) Each tobacco product manufacturer that elects to place funds into escrow pursuant to subdivision (2) of this section shall annually certify to the Attorney General that it is in compliance with subdivision (2) of this section. The Attorney General may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any calendar quarter to place into escrow the funds required under this section shall:

(i) Be required within fifteen days to place such funds into escrow as shall bring the manufacturer into compliance with this section. The court, upon a finding of a violation of subdivision (2) of this section, may impose a civil penalty in an amount not to exceed five percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed one hundred percent of the original amount improperly withheld from escrow;

(ii) In the case of a knowing violation, be required within fifteen days to place such funds into escrow as shall bring the manufacturer into compliance with this section. The court, upon a finding of a knowing violation of subdivision (2) of this section, may impose a civil penalty in an amount not to exceed fifteen percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent of the original amount improperly withheld from escrow. Such civil penalty shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska; and

(iii) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary, for a period not to exceed two years.

(d) An importer shall be jointly and severally liable for escrow deposits due from a nonparticipating manufacturer with respect to nonparticipating manufacturer cigarettes that it imported and which were then sold in this state, except as provided for by an agreement entered into pursuant to section 77-2602.06.

(e) Each failure to make a quarterly deposit required under this section constitutes a separate violation.

Source: Laws 1999, LB 574, § 2; Laws 2004, LB 944, § 1; Laws 2011, LB590, § 5.

69-2703.01 Unconstitutionality of amendatory provision; effect.

If the amendments to subdivision (2)(b)(ii) of section 69-2703 made by Laws 2004, LB 944, are held by a court of competent jurisdiction to be unconstitutional, then the changes made by Laws 2004, LB 944, shall be deemed repealed and subdivision (2)(b)(ii) of section 69-2703 shall be deemed to be in the form as it existed prior to such amendments. Neither a holding of unconstitutionality nor an implied repeal of the amendment shall affect, impair, or invalidate any other portion of section 69-2703 or the application of such section to any other person or circumstance and those remaining portions of section 69-2703 shall at all times continue in full force and effect.

Source: Laws 2004, LB 944, § 2.

69-2704 Legislative findings.

The Legislature finds that violations of sections 69-2702 and 69-2703 threaten the integrity of the tobacco Master Settlement Agreement, the fiscal soundness of the state, and the public health. The Legislature finds that enacting procedural enhancements will aid the enforcement of sections 69-2702 and 69-2703 and thereby safeguard the Master Settlement Agreement, the fiscal soundness of the state, and the public health.

Source: Laws 2003, LB 572, § 1.

69-2705 Terms, defined.

For purposes of sections 69-2704 to 69-2711:

(1) Brand family means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, menthol, lights, kings, and 100s, and includes any brand name, alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, or recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes;

(2) Cigarette has the same meaning as in section 69-2702;

(3) Cigarette inputs means any machinery or other component parts typically used in the manufacture of cigarettes, including, without limitation, tobacco whether processed or unprocessed, cigarette papers and tubes, cigarette filters or any component parts intended for use in the making of cigarette filters, and any machinery typically used in the making of cigarettes;

(4) Days has the same meaning as in section 69-2702;

(5) Directory means the directory compiled by the Tax Commissioner under section 69-2706 or, in the case of references to another state's directory, the directory compiled under the similar law in that other state;

(6) Importer has the same meaning as in section 69-2702;

(7) Indian country has the same meaning as in section 69-2702;

(8) Indian tribe has the same meaning as in section 69-2702;

(9) Master Settlement Agreement has the same meaning as in section 69-2702;

(10) Nonparticipating manufacturer means any tobacco product manufacturer that is not a participating manufacturer;

(11) Nonparticipating manufacturer cigarettes means cigarettes (a) of a brand family that is not included in the certification of a participating manufacturer under subsection (1) of section 69-2706, (b) that are subject to the escrow requirement under subdivision (2) of section 69-2703 because the participating manufacturer in whose certification the brand family is included is not generally performing its financial obligations under the Master Settlement Agreement, or (c) of a brand family of a participating manufacturer that is not otherwise listed on the directory under subsection (2) of section 69-2706;

(12) Package means any pack or other container on which a state stamp or tribal stamp could be applied consistent with and as required by sections 69-2701 to 69-2711 and 77-2601 to 77-2622 that contains one or more individual cigarettes for sale. Nothing in such sections shall alter any other applicable requirement with respect to the minimum number of cigarettes that may be

contained in a pack or other container of cigarettes. References to package do not include a container of multiple packages;

(13) Participating manufacturer has the same meaning as in section II(jj) of the Master Settlement Agreement;

(14) Person means any natural person, trustee, company, partnership, corporation, or other legal entity, including any Indian tribe or instrumentality thereof;

(15) Purchase means any acquisition in any manner or by any means for any consideration. The term includes transporting or receiving product in connection with a purchase;

(16) Qualified escrow fund has the same meaning as in section 69-2702;

(17) Retailer includes retail dealers as defined in section 77-2601 or anyone who is licensed under sections 28-1420 to 28-1422;

(18) Sale or sell means any transfer, exchange, or barter in any manner or by any means for any consideration. Sale or sell includes distributing or shipping product in connection with a sale;

(19) Shortfall amount means the difference between (a) the full amount of the deposit required to be made by a nonparticipating manufacturer for a calendar quarter under section 69-2703 and (b) the sum of (i) any amounts precollected by a stamping agent and deposited into escrow for that calendar quarter on behalf of the nonparticipating manufacturer under section 69-2708.01, (ii) the amount deposited into escrow by the nonparticipating manufacturer for that calendar quarter under section 69-2703, (iii) any amounts deposited into escrow for that calendar quarter under subdivision (2)(d) of section 69-2703 by an importer on such nonparticipating manufacturer's cigarettes, and (iv) any amounts collected by the state for that calendar quarter under the bond posted by the nonparticipating manufacturer under section 69-2707.01. The shortfall amount, if any, for a nonparticipating manufacturer for a calendar quarter shall be calculated by the Attorney General within fifteen days following the date on which the state determines the amount it will collect on the bond posted by the nonparticipating manufacturer as provided in section 69-2707.01;

(20) Stamping agent means a person that is authorized to affix stamps to packages or other containers of cigarettes under section 77-2603 or 77-2603.01 or any person that is required to pay the tobacco tax imposed pursuant to section 77-4008 on roll-your-own cigarettes;

(21) Tax Commissioner means the Tax Commissioner of the State of Nebraska;

(22) Tobacco product manufacturer has the same meaning as in section 69-2702;

(23) Units sold has the same meaning as in section 69-2702; and

(24) Unstamped cigarettes means any cigarettes that are not contained in a package bearing a stamp required under section 77-2603 or 77-2603.01.

Source: Laws 2003, LB 572, § 2; Laws 2011, LB590, § 6.

69-2706 Tobacco product manufacturer; certification; contents; Tax Commissioner; powers and duties; directory; prohibited acts.

(1)(a) Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a distributor, retailer, or similar intermediary

or intermediaries, shall execute and deliver on a form prescribed by the Tax Commissioner a certification to the Tax Commissioner and the Attorney General no later than the thirtieth day of April each year, certifying under penalty of perjury that, as of the date of such certification, such tobacco product manufacturer either is a participating manufacturer in compliance with subdivision (1) of section 69-2703 or is a nonparticipating manufacturer in full compliance with subdivision (2) of section 69-2703.

(b) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update such list thirty calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the Tax Commissioner and the Attorney General.

(c) A nonparticipating manufacturer shall include in its certification (i) a list of all of its brand families and the number of units sold for each brand family that were sold in the state during the preceding calendar year and (ii) a list of all of its brand families that have been sold in the state at any time during the current calendar year (A) indicating by an asterisk any brand family sold in the state during the preceding or current calendar year that is no longer being sold in the state as of the date of such certification and (B) identifying by name and address any other manufacturer of such brand families in the preceding calendar year. The nonparticipating manufacturer shall update such list thirty calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the Tax Commissioner and the Attorney General.

(d) In the case of a nonparticipating manufacturer, such certification shall further certify:

(i) That such nonparticipating manufacturer is registered to do business in the state or has appointed an agent for service of process in Nebraska and provided notice thereof as required by section 69-2707;

(ii) That such nonparticipating manufacturer has established and continues to maintain a qualified escrow fund pursuant to a qualified escrow agreement that has been reviewed and approved by the Attorney General or has been submitted for review by the Attorney General;

(iii) That such nonparticipating manufacturer is in full compliance with subdivision (2) of section 69-2703 and this section and any rules and regulations adopted and promulgated pursuant thereto;

(iv)(A) The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established such qualified escrow fund required pursuant to subdivision (2) of section 69-2703 and all rules and regulations adopted and promulgated pursuant thereto; (B) the account number of such qualified escrow fund and any subaccount number for the State of Nebraska; (C) the amount such nonparticipating manufacturer placed in such fund for cigarettes sold in the state during the preceding calendar year, the dates and amount of each such deposit, and such evidence or verification as may be deemed necessary by the Attorney General to confirm the foregoing; and (D) the amounts and dates of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from such fund or from any other qualified escrow fund into which it ever made escrow payments pursuant to subdivision (2) of section 69-2703 and all rules and regulations adopted and promulgated pursuant thereto;

(v) That such nonparticipating manufacturer consents to be sued in the district courts of the State of Nebraska for purposes of the state (A) enforcing any provision of sections 69-2703 to 69-2711 and any rules and regulations adopted and promulgated thereunder or (B) bringing a released claim as defined in section 69-2702; and

(vi) The information required to establish that such nonparticipating manufacturer has posted the appropriate bond or cash equivalent required under section 69-2707.01.

(e) A tobacco product manufacturer shall not include a brand family in its certification unless (i) in the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its payments under the Master Settlement Agreement for the relevant year in the volume and shares determined pursuant to the Master Settlement Agreement and (ii) in the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of subdivision (2) of section 69-2703. Nothing in this section shall be construed as limiting or otherwise affecting the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of section 69-2703.

(f) Tobacco product manufacturers shall maintain all invoices and documentation of sales and other such information relied upon for such certification for a period of five years unless otherwise required by law to maintain them for a greater period of time.

(2) The Tax Commissioner shall develop, maintain, and make available for public inspection or publish on its web site a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of subsection (1) of this section and all brand families that are listed in such certifications, and:

(a) The Tax Commissioner shall not include or retain in such directory the name or brand families of any tobacco product manufacturer that has failed to provide the required certification or whose certification the commissioner determines is not in compliance with subsection (1) of this section unless the Tax Commissioner has determined that such violation has been cured to his or her satisfaction;

(b) Neither a tobacco product manufacturer nor brand family shall be included or retained in the directory if the Attorney General recommends and notifies the Tax Commissioner who concludes, in the case of a nonparticipating manufacturer, that (i) any escrow payment required pursuant to subdivision (2) of section 69-2703 for any period for any brand family, whether or not listed by such nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the Attorney General or (ii) any outstanding final judgment, including interest thereon, for violations of section 69-2703 has not been fully satisfied for such brand family and such manufacturer;

(c) As a condition to being listed and having its brand families listed in the directory, a tobacco product manufacturer shall also (i) certify annually that such manufacturer or its importer holds a valid permit under 26 U.S.C. 5713 and provide a copy of such permit to the Tax Commissioner and the Attorney

General, (ii) upon request of the Tax Commissioner or Attorney General, provide documentary proof that it is not in violation of subdivision (1) of section 59-1520, and (iii) certify that it is in compliance with all reporting and registration requirements of 15 U.S.C. 376 and 376a;

(d) The Tax Commissioner shall update the directory no later than May 15 of each year to reflect certifications made on or before April 30 as required in subsection (1) of this section. The Tax Commissioner shall continuously update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of sections 69-2704 to 69-2711;

(e) The Tax Commissioner shall transmit by email or other practicable means to each stamping agent notice of any removal from the directory of any tobacco product manufacturer or brand family. Unless otherwise provided by agreement between the stamping agent and a tobacco product manufacturer, the stamping agent shall be entitled to a refund from a tobacco product manufacturer for any money paid by the stamping agent to the tobacco product manufacturer for any cigarettes of the tobacco product manufacturer still held by the stamping agent on the date of notice by the Tax Commissioner of the removal from the directory of that tobacco product manufacturer or the brand family or for any cigarettes returned to the stamping agent by its customers under subsection (8) of section 69-2709. The Tax Commissioner shall not restore to the directory the tobacco product manufacturer or the brand family until the tobacco product manufacturer has paid the stamping agent any refund due; and

(f) Every stamping agent shall provide and update as necessary an electronic mail address to the Tax Commissioner for the purpose of receiving any notifications as may be required by sections 69-2704 to 69-2711.

(3) The failure of the Tax Commissioner to provide notice of any intended removal from the directory as required under subdivision (2)(e) of this section or the failure of a stamping agent to receive such notice shall not relieve the stamping agent of its obligations under sections 69-2704 to 69-2711.

(4) It shall be unlawful for any person (a) to affix a Nebraska stamp pursuant to section 77-2603 to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory, (b) to affix a tribal stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory except as authorized by an agreement pursuant to section 77-2602.06, or (c) to sell, offer, or possess for sale in this state cigarettes of a tobacco product manufacturer or brand family in this state not included in the directory.

Source: Laws 2003, LB 572, § 3; Laws 2007, LB580, § 1; Laws 2011, LB590, § 7.

69-2707 Nonresident or foreign nonparticipating manufacturer; agent for service of process.

(1) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to having its brand families included or retained in the directory created in subsection (2) of section 69-2706, appoint and continually engage without interruption the services of an agent in Nebraska to act as agent for the service of process on whom all process, and any action or

proceeding against it concerning or arising out of the enforcement of sections 69-2703 to 69-2711, may be served in any manner authorized by law. Such service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, telephone number, and proof of the appointment and availability of such agent to the Tax Commissioner and Attorney General.

(2) The nonparticipating manufacturer shall provide notice to the Tax Commissioner and Attorney General thirty calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the Attorney General of the appointment of a new agent no less than five calendar days prior to the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the Tax Commissioner and Attorney General of the termination within five calendar days and shall include proof to the satisfaction of the Attorney General of the appointment of a new agent.

(3) Any nonparticipating manufacturer whose products are sold in this state who has not appointed and engaged the services of an agent as required by this section shall be deemed to have appointed the Secretary of State as its agent for service of process. The appointment of the Secretary of State as agent shall not satisfy the condition precedent required in subsection (1) of this section to have the nonparticipating manufacturer's brand families included or retained in the directory.

Source: Laws 2003, LB 572, § 4; Laws 2007, LB580, § 2; Laws 2011, LB590, § 8.

69-2707.01 Nonparticipating manufacturers; bond; amount; failure to make escrow deposits; execution upon bond.

(1) All nonparticipating manufacturers shall post a bond or its cash equivalent for the benefit of the state which is subject to execution under subsection (3) of this section. The bond shall be posted by corporate surety located within the United States, or the cash equivalent of the bond shall be posted by the nonparticipating manufacturer in an account approved by the state. The bond or its cash equivalent shall be posted and evidence of such posting shall be provided to the Tax Commissioner at least ten days in advance of each calendar quarter as a condition to the nonparticipating manufacturer and its brand families being included in the directory for that quarter.

(2) The amount of the bond shall be determined as follows:

(a) Unless subdivision (c) of this subsection is applicable, for a nonparticipating manufacturer or its affiliates which have been listed on any state's directory for at least three years or for any nonparticipating manufacturer whose sales are authorized pursuant to an agreement under section 77-2602.06, the amount of the bond required shall be twenty-five thousand dollars;

(b) Unless subdivision (c) of this subsection is applicable, for a nonparticipating manufacturer or its affiliates which have not been listed on any state's directory for at least three years, the amount of the bond required shall be fifty thousand dollars; and

(c) For a nonparticipating manufacturer or its affiliates which have failed, in the past three years, to make a full and timely escrow deposit due under section 69-2703, unless the failure was not knowing or intentional and was promptly

cured upon notice, or for any nonparticipating manufacturer or its affiliates which were involuntarily removed from any state's directory, unless the removal was determined to have been erroneous or illegal, the amount of the bond required shall be the greater of (i) fifty thousand dollars or (ii) the greatest amount of escrow owed by the nonparticipating manufacturer or its predecessor in any calendar year in Nebraska within the preceding five calendar years.

(3) If a nonparticipating manufacturer that posted a bond has failed to make, or have made on its behalf by an entity with joint and several liability, escrow deposits equal to the full amount owed for a quarter within fifteen days following the due date for the quarter under section 69-2703, the state may execute upon the bond, first to recover delinquent escrow, which amount shall be deposited into a qualified escrow account under section 69-2703, and then to recover civil penalties and costs authorized under such section. Escrow obligations above the amount collected on the bond remain due from that nonparticipating manufacturer and, as provided in subdivision (2)(d) of section 69-2703 and section 69-2708.01, from the importers and stamping agents that sold its cigarettes during that calendar quarter.

Source: Laws 2011, LB590, § 9.

69-2708 Stamping agent; duties; Tax Commissioner; Attorney General; powers.

(1) Not later than fifteen days following the end of each month, each stamping agent shall submit, in the manner directed by the Tax Commissioner, such information as the Tax Commissioner requires to facilitate compliance with sections 69-2704 to 69-2711, including, but not limited to (a) a list by brand family of the total number of cigarettes or, in the case of roll-your-own, the equivalent stick count for which the stamping agent affixed stamps during the previous month or otherwise paid the total due for such cigarettes, the total number of cigarettes contained in the packages to which it affixed each respective type of stamp, and by name and number of cigarettes, the tobacco product manufacturers and brand families of the packages to which it affixed each respective type of stamp or similar information for roll-your-own on which tax was paid and (b) the total number of cigarettes acquired by the stamping agent during that month for sale in or into the state or for sale from this state into another state, sold in or into the state by the stamping agent during that month and held in inventory in the state or for sale into the state by the stamping agent as of the last business day of that month, in each case identifying by name and number of cigarettes, (i) the manufacturers of those cigarettes and (ii) the brand families of those cigarettes. In the case of a stamping agent that is a retailer, reports under subdivision (1)(a) of this section do not have to include cigarettes contained in packages that bore a stamp required under section 77-2603 or 77-2603.01 at the time the stamping agent received them and that the stamping agent then sold at retail. The stamping agent shall also submit a certification stating that the information provided to the Tax Commissioner is complete and accurate. The stamping agent shall maintain, and make available to the Tax Commissioner, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the Tax Commissioner for a period of five years.

(2) The Attorney General may require at any time from the nonparticipating manufacturer proof, from the financial institution in which such manufacturer has established a qualified escrow fund for the purpose of compliance with section 69-2703, of the amount of money in such fund, exclusive of interest, the amounts and dates of each deposit to such fund, and the amounts and dates of each withdrawal from such fund.

(3) In addition to the information required to be submitted pursuant to subsection (1) of this section, the Tax Commissioner or Attorney General may require a stamping agent, distributor, or tobacco product manufacturer to submit any additional information, including, but not limited to, samples of the packaging or labeling of each brand family, as is necessary to enable the Tax Commissioner or Attorney General to determine whether a tobacco product manufacturer is in compliance with sections 69-2704 to 69-2711.

(4) The Tax Commissioner or the Attorney General may require production of information sufficient to enable the Tax Commissioner or Attorney General to determine the adequacy of the amount of a quarterly escrow deposit under subdivision (2) of section 69-2703. The Tax Commissioner may adopt and promulgate rules and regulations implementing how tobacco product manufacturers subject to subdivision (2) of section 69-2703 make quarterly payments.

Source: Laws 2003, LB 572, § 5; Laws 2007, LB580, § 3; Laws 2011, LB590, § 10; Laws 2015, LB261, § 4.

69-2708.01 Stamping agent; responsible for escrow deposits; when; liability; calculation.

(1) A stamping agent shall be responsible for escrow deposits required under subdivision (2) of section 69-2703 in the event it receives notice from the Attorney General that there is a shortfall amount with respect to nonparticipating manufacturer cigarettes stamped by it.

(2) The liability of a stamping agent for escrow deposits shall be calculated as follows: If there is a shortfall amount for a nonparticipating manufacturer for a calendar quarter, each stamping agent that sold cigarettes of that nonparticipating manufacturer during the calendar quarter shall deposit into such escrow account as shall be designated by the state an amount equal to the applicable shortfall amount multiplied by a fraction, the numerator of which is the number of cigarettes of that nonparticipating manufacturer sold in or into the state by the stamping agent during that calendar quarter and the denominator of which is the total number of cigarettes of that nonparticipating manufacturer sold by all stamping agents in or into the state during that calendar quarter, except that any nonparticipating manufacturer cigarettes sold in or into the state by a stamping agent during the calendar quarter in which the stamping agent collected and deposited the required escrow deposit amount on or before the due date for deposits for that quarter under subdivision (2) of section 69-2703 shall be excluded from both the numerator and the denominator of the fraction. To the extent a stamping agent makes payments with respect to a shortfall amount under this subsection, such stamping agent shall have a claim against the nonparticipating manufacturer for such amount.

(3) A stamping agent shall not be liable for escrow deposits under subsections (1) and (2) of this section if, at the time of purchase of such nonparticipating manufacturer's cigarettes:

(a) The nonparticipating manufacturer is on the directory pursuant to section 69-2706; and

(b) The state denotes on the directory that the nonparticipating manufacturer has posted the appropriate bond required under section 69-2707.01.

Source: Laws 2011, LB590, § 11.

69-2709 Revocation or suspension of stamping agent license; civil penalty; termination of license; grounds; violations; penalties; effect of termination; eligibility for reinstatement; directory license; termination; procedure; contra-band; actions to enjoin; criminal penalty; remedies cumulative.

(1) In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that a stamping agent has violated subsection (4) of section 69-2706 or any rule or regulation adopted and promulgated pursuant thereto, the Tax Commissioner may revoke or suspend the license of any stamping agent in the manner provided by section 77-2615.01. For each violation of subsection (4) of section 69-2706 or the rules and regulations, the Tax Commissioner may also impose a civil penalty in an amount not to exceed the greater of five hundred percent of the retail value of the cigarettes or five thousand dollars upon a determination of violation of subsection (4) of section 69-2706 or any rules or regulations adopted and promulgated pursuant thereto. Such penalty shall be imposed in the manner provided by section 77-2615.01.

(2) The license of a stamping agent shall be subject to termination if the stamping agent:

(a) Fails to provide a report required under section 69-2708, 69-2710.01, or 77-2604.01;

(b) Files an incomplete or inaccurate report required under section 69-2708, 69-2710.01, or 77-2604.01 or files an inaccurate certification required under section 69-2708, subsection (2) of section 77-2603, or section 69-2710.01;

(c) Fails to pay taxes as provided in section 77-2602 or deposit escrow as provided in section 69-2708.01;

(d) Sells cigarettes in or into the state in a package that bears a stamp required under section 77-2603 or 77-2603.01 that is not the correct stamp and provides for a lower level of tax than the correct stamp;

(e) Sells unstamped cigarettes in, into, or from the state or possesses unstamped cigarettes in the state except as provided in section 77-2607;

(f) Purchases, sells in or into the state, or affixes a stamp to a package containing cigarettes of a manufacturer or brand family that is not at the time listed in the directory, or possesses such cigarettes more than ten days after receiving notice that the manufacturer or brand family is not in the directory, unless such stamping agent possesses a directory license under section 77-2603 or unless expressly permitted under sections 69-2701 to 69-2711 or sections 77-2601 to 77-2622; or

(g) Purchases or sells cigarettes in violation of subsection (5) of this section or section 69-2710.02.

(3) In the case of a violation under subdivision (2)(a), (b), (c), or (d) of this section that was not knowing or intentional, the stamping agent shall be entitled to cure the violation within ten days after receipt of notice of such

violation. The license of a stamping agent that fully cures the violation during that period shall not be terminated on account of that violation.

(4) In the case of a knowing or intentional violation under subdivision (2)(a), (b), (c), or (d) of this section, or of any violation described in subdivision (2)(e) or (f) of this section, the stamping agent shall for a first violation be subject to a civil penalty of up to one thousand dollars and be guilty of a Class IV misdemeanor and for a second or subsequent violation be subject to a civil penalty of up to five thousand dollars per violation and be guilty of a Class II misdemeanor. In the case of violations described in subdivision (2)(d), (e), or (f) of this section, each sale constitutes a separate offense.

(5) The Tax Commissioner shall promptly remove any stamping agent whose license is terminated from the list required by subsection (4) of section 77-2603 and shall publish a notice of the termination on the Tax Commissioner's web site and send notice of the termination to all stamping agents and to all persons listed in the directory. Beginning ten days following the publication and sending of such notice, no person may sell cigarettes to, or purchase cigarettes from, the stamping agent whose license has been terminated.

(6) If a stamping agent whose license has been terminated is a tobacco product manufacturer, the tobacco product manufacturer and its brand families shall be removed from the directory.

(7) A stamping agent whose license is terminated shall be eligible for reinstatement:

(a) Ninety days following the termination, in the case of a first failure under subdivision (2)(a), (b), (c), or (d) of this section that was not knowing or intentional;

(b) One hundred eighty days following the termination, in the case of a second failure under subdivision (2)(a), (b), (c), or (d) of this section that was not knowing or intentional;

(c) One year following the termination, in the case of a third or subsequent failure under subdivision (2)(a), (b), (c), or (d) of this section that was not knowing or intentional;

(d) One year following the termination, in the case of a first knowing or intentional failure under subdivision (2)(a), (b), (c), or (d) of this section or a first violation described in subdivision (2)(e), (f), or (g) of this section; and

(e) Three years following the termination, in the case of a second or subsequent knowing or intentional failure under subdivision (2)(a), (b), (c), or (d) of this section or a second or subsequent violation described in subdivision (2)(e), (f), or (g) of this section.

(8) Any cigarettes that have been sold, offered for sale, or possessed for sale in this state in violation of subsection (4) of section 69-2706 shall be deemed contraband under section 77-2620 and such cigarettes shall be subject to seizure and forfeiture as provided in section 77-2620, except that all such cigarettes so seized and forfeited shall be destroyed and not resold. The stamping agent shall notify its customers for a brand family with regard to any notice of removal of a tobacco product manufacturer or a brand family from the directory and give its customers a seven-day period for the return of cigarettes that become contraband.

(9) The Attorney General, on behalf of the Tax Commissioner, may seek an injunction to restrain a threatened or actual violation of subsection (4) of

section 69-2706 or section 69-2708 by a stamping agent and to compel the stamping agent to comply with subsection (4) of section 69-2706 or section 69-2708. In any action brought pursuant to this section, the state shall be entitled to recover the costs of investigation, costs of the action, and reasonable attorney's fees. This subsection shall not apply to a stamping agent purchasing cigarettes which are not in violation of subsection (4) of section 69-2706 or section 69-2708.

(10) It is unlawful for a person to (a) sell or distribute cigarettes for sale in this state or (b) acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in the state in violation of subsection (4) of section 69-2706. A violation of this subsection is a Class III misdemeanor.

(11) If a court determines that a person has violated any portion of sections 69-2704 to 69-2711, the court shall order the payment of any profits, gains, gross receipts, or other benefits from the violation to be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska. Unless otherwise expressly provided, the remedies or penalties provided by sections 69-2704 to 69-2711 are cumulative to each other and to the remedies or penalties available under all applicable laws of this state.

(12) It is unlawful for any manufacturer, importer, or stamping agent to knowingly submit any false information required pursuant to sections 69-2703 to 69-2711. A violation of this subsection is a Class IV felony. Knowing submission of false information shall also be grounds for removal of a tobacco product manufacturer from the directory.

(13) A tobacco product manufacturer that knowingly or intentionally sells cigarettes in violation of subsection (5) of this section or section 69-2710.01 and its brand families shall be removed from the directory.

(14) A nonparticipating manufacturer whose total nationwide reported sales on which federal excise tax is paid exceed the sum of its nationwide reports under 15 U.S.C. 375 et seq. and any intrastate sales reports under 15 U.S.C. 375 et seq. by more than five percent of its total sales or one million cigarettes, whichever is less, shall be subject to removal from the directory unless it cures or satisfactorily explains the discrepancy within ten days after receipt of notice of the discrepancy from the Attorney General pursuant to section 69-2708.01.

(15) Any person that is not a stamping agent or tobacco product manufacturer that fails to file a complete and accurate report required under section 69-2708, 69-2710.01, 77-2604, or 77-2604.01 shall be entitled to cure the failure within ten days after receipt of notice of the discrepancy from the Attorney General pursuant to section 69-2708.01. If the person fails to fully cure the failure within such period, it shall be subject to a civil penalty of up to one thousand dollars per violation and shall be ineligible to hold any license of the state regarding cigarette sales until the date specified by subsection (7) of this section for violations of subdivision (2)(a) of this section.

(16) A directory license shall be subject to termination if the licensee acts inconsistently with its certification under subsection (2) of section 77-2603 or violates sections 69-2701 to 69-2711.

(17) Any person that knowingly or intentionally purchases or sells cigarettes in violation of subsection (5) of this section or section 69-2710.01 or that knowingly or intentionally sells cigarettes in or into the state in a package that

bears a stamp required under section 77-2603 or 77-2603.01 that is not the correct stamp and provides for a lower level of tax than the correct stamp shall for a first violation be subject to a civil penalty of up to one thousand dollars and be guilty of a Class IV misdemeanor and for a second or subsequent violation be subject to a civil penalty of up to five thousand dollars per violation and be guilty of a Class II misdemeanor. Each sale constitutes a separate violation.

Source: Laws 2003, LB 572, § 6; Laws 2007, LB580, § 4; Laws 2011, LB590, § 12.

69-2710 Removal from directory; procedure.

(1) Before any tobacco product manufacturer may be removed from the directory, the Tax Commissioner shall provide the tobacco product manufacturer thirty days' notice of the intended action and shall post the notice in the directory. The tobacco product manufacturer shall have thirty days to come into compliance with sections 69-2703 to 69-2711 or, in the alternative, secure a temporary injunction against removal in the district court of Lancaster County. For purposes of the temporary injunction sought pursuant to this subsection, loss of the ability to sell tobacco products as a result of removal from the directory shall constitute irreparable harm. If after thirty days the tobacco product manufacturer remains in noncompliance and has not obtained a temporary injunction pursuant to this subsection, the tobacco product manufacturer shall be removed from the directory.

(2) If the Tax Commissioner determines that a tobacco product manufacturer shall not be included in the directory, such manufacturer may request a contested case before the Tax Commissioner under the Administrative Procedure Act. The Tax Commissioner shall notify the tobacco product manufacturer in writing of the determination not to include it in the directory. A request for hearing shall be made within thirty calendar days after the date of the determination that the manufacturer shall not be included in the directory and shall contain the evidence supporting the manufacturer's compliance with sections 69-2703 to 69-2711. The hearing shall be held within sixty days after the request. At the hearing, the Tax Commissioner shall determine whether the tobacco product manufacturer is in compliance with sections 69-2703 to 69-2711 and whether the manufacturer should be listed in the directory. A final decision shall be rendered within thirty days after the hearing. Any decision of the Tax Commissioner may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 2003, LB 572, § 7; Laws 2011, LB590, § 13.

Cross References

Administrative Procedure Act, see section 84-920.

69-2710.01 Report; contents.

(1) Any person that during a month acquired, purchased, sold, possessed, transferred, transported, or caused to be transported in or into this state cigarettes of a tobacco product manufacturer or brand family that was not in the directory at the time shall, within fifteen days following the end of that month, file a report in the manner prescribed by the Tax Commissioner and certify to the state that the report is complete and accurate. The report shall contain, in addition to any further information that the Tax Commissioner may

reasonably require to assist the Tax Commissioner in enforcing sections 69-2701 to 69-2711 and 77-2601 to 77-2622 and the Tobacco Products Tax Act, the following information:

(a) The total number of those cigarettes, in each case identifying by name and number of cigarettes (i) the manufacturers of those cigarettes, (ii) the brand families of those cigarettes, (iii) in the case of a sale or transfer, the name and address of the recipient of those cigarettes, (iv) in the case of an acquisition or purchase, the name and address of the seller or sender of those cigarettes, and (v) the other states in whose directory the manufacturer and brand family of those cigarettes were listed at the time and whose stamps the person is authorized to affix; and

(b) In the case of acquisition, purchase, or possession, the details of the person's subsequent sale or transfer of those cigarettes, identifying by name and number of cigarettes (i) the brand families of those cigarettes, (ii) the date of the sale or transfer, (iii) the name and address of the recipient, (iv) the number of stamps of each other state that the person affixed to the packages containing those cigarettes during that month, (v) the total number of cigarettes contained in the packages to which it affixed each respective other state's stamp, (vi) the manufacturers and brand families of the packages to which it affixed each respective other state's stamp, and (vii) a certification that it reported each sale or transfer to the taxing authority of the other state by fifteen days following the end of the month in which the sale or transfer was made and attaching a copy of all such reports. If the subsequent sale or transfer is from this state into another state in packages not bearing a stamp of the other state, the report shall also contain the information described in subdivision (2)(c) of section 77-2604.01.

(2) Reports under this section shall be in addition to reports under sections 69-2708, 77-2604, and 77-2604.01.

Source: Laws 2011, LB590, § 14; Laws 2017, LB217, § 4.

Cross References

Tobacco Products Tax Act, see section 77-4001.

69-2710.02 License of stamping agent; termination; grounds; cure; notice; reinstatement; removal from directory; grounds; cure; notice; procedure.

(1) The license of a stamping agent may be subject to termination if its similar license is terminated in any other state based on acts or omissions that would be grounds for license termination under subsection (2) of section 69-2709, unless the stamping agent demonstrates that its termination in the other state was effected without due process. If a stamping agent's license is terminated in another state for a violation similar to a violation listed in subdivision (2)(a), (b), (c), or (d) of section 69-2709 that was not knowing or intentional, the stamping agent shall not be subject to license termination if the stamping agent fully cures such violation and provides notice of such cure to the Department of Revenue within ten days after receipt of notice of such violation. A stamping agent whose license is terminated under this subsection shall be eligible for reinstatement upon the earlier of the date specified by subsection (7) of section 69-2709 for the act or omission in question or reinstatement of its license by the other state.

(2) A tobacco product manufacturer and its brand families may be removed from the directory if it is removed from the directory of another state based on

acts or omissions that would, if done in this state, be grounds for removal from the directory under section 69-2706, 69-2707, 69-2707.01, or 69-2710 or subsection (6) of section 69-2709, unless the tobacco product manufacturer demonstrates that its removal from the other state's directory was effected without due process, that it fully cured such violation and provided notice of such cure to the Department of Revenue within thirty days after receipt of notice of the violation, or that it secured a temporary injunction against removal from the directory in the district court of Lancaster County. For purposes of a temporary injunction sought pursuant to this subsection, loss of the ability to sell tobacco products as a result of removal from the directory shall constitute irreparable harm. If, after thirty days, the tobacco product manufacturer remains in noncompliance and has not obtained a temporary injunction pursuant to this subsection, the tobacco product manufacturer shall be removed from the directory. A manufacturer that is removed from the directory under this subsection shall be eligible for reinstatement upon the earlier of the date on which it cures the violation or is reinstated to the directory in the other state.

(3) The applicable procedures under section 77-2615.01 shall apply to terminations and removals under this section.

Source: Laws 2011, LB590, § 15.

69-2710.03 Rules and regulations.

The Tax Commissioner may adopt and promulgate rules and regulations necessary to effect the purposes of sections 69-2703 to 69-2711.

Source: Laws 2011, LB590, § 16.

69-2711 Conflict of laws; how treated.

If a court of competent jurisdiction finds that the provisions of sections 69-2704 to 69-2711 and of sections 69-2702 and 69-2703 conflict and cannot be harmonized, then the provisions of sections 69-2702 and 69-2703 shall control. If sections 69-2704 to 69-2711 or any part of any such sections causes sections 69-2702 and 69-2703 to no longer constitute a Qualifying or Model Statute, as those terms are defined in the Master Settlement Agreement, then that portion of sections 69-2704 to 69-2711 shall not be valid.

Source: Laws 2003, LB 572, § 13; Laws 2011, LB590, § 17.

POWER DISTRICTS AND CORPORATIONS

CHAPTER 70
POWER DISTRICTS AND CORPORATIONS

Article.

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Cross References

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- Dividends only out of earnings, see Article X, section 5, Constitution of Nebraska.
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- Payment in lieu of taxes, see Article VIII, section 11, Constitution of Nebraska.
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- Property and franchises, may be taken for public necessity, see Article X, section 6, Constitution of Nebraska.
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ARTICLE 1

GENERAL PROVISIONS

Section

70-101. Districts and corporations; furnish information; enforcement.
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70-104. Repealed. Laws 1945, c. 154, § 1.
70-105. Repealed. Laws 1945, c. 154, § 1.
70-106. Repealed. Laws 1945, c. 154, § 1.
70-107. Repealed. Laws 1945, c. 154, § 1.
70-108. Repealed. Laws 1945, c. 154, § 1.
70-109. Repealed. Laws 1945, c. 154, § 1.
70-110. Repealed. Laws 1945, c. 154, § 1.
70-111. Repealed. Laws 1945, c. 154, § 1.
70-112. Repealed. Laws 1945, c. 154, § 1.
70-113. Repealed. Laws 1945, c. 154, § 1.
70-114. Repealed. Laws 1945, c. 154, § 1.
70-115. Repealed. Laws 1945, c. 154, § 1.
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70-120. Repealed. Laws 1945, c. 154, § 1.
70-121. Repealed. Laws 1945, c. 154, § 1.
70-122. Repealed. Laws 1945, c. 154, § 1.
70-123. Repealed. Laws 1945, c. 154, § 1.
70-124. Repealed. Laws 1945, c. 154, § 1.
70-125. Repealed. Laws 1945, c. 154, § 1.
70-126. Repealed. Laws 1945, c. 154, § 1.
70-127. Repealed. Laws 1945, c. 154, § 1.
70-128. Repealed. Laws 1945, c. 154, § 1.
70-129. Repealed. Laws 1945, c. 154, § 1.
70-130. Repealed. Laws 1945, c. 154, § 1.
70-131. Repealed. Laws 1945, c. 154, § 1.
70-132. Repealed. Laws 1945, c. 154, § 1.
70-133. Repealed. Laws 1945, c. 154, § 1.
70-134. Repealed. Laws 1945, c. 154, § 1.
70-135. Repealed. Laws 1945, c. 154, § 1.

Section

- 70-136. Repealed. Laws 1945, c. 154, § 1.
- 70-137. Repealed. Laws 1945, c. 154, § 1.
- 70-138. Repealed. Laws 1945, c. 154, § 1.
- 70-139. Repealed. Laws 1945, c. 154, § 1.
- 70-140. Repealed. Laws 1945, c. 154, § 1.
- 70-141. Repealed. Laws 1945, c. 154, § 1.
- 70-142. Repealed. Laws 1945, c. 154, § 1.
- 70-143. Repealed. Laws 1945, c. 154, § 1.
- 70-144. Repealed. Laws 1945, c. 154, § 1.
- 70-145. Repealed. Laws 1945, c. 154, § 1.
- 70-146. Repealed. Laws 1945, c. 154, § 1.
- 70-147. Repealed. Laws 1945, c. 154, § 1.
- 70-148. Repealed. Laws 1945, c. 154, § 1.
- 70-149. Repealed. Laws 1945, c. 154, § 1.
- 70-150. Repealed. Laws 1945, c. 154, § 1.
- 70-151. Repealed. Laws 1945, c. 154, § 1.
- 70-152. Repealed. Laws 1945, c. 154, § 1.
- 70-153. Repealed. Laws 1945, c. 154, § 1.
- 70-154. Repealed. Laws 1945, c. 154, § 1.
- 70-155. Repealed. Laws 1945, c. 154, § 1.
- 70-156. Repealed. Laws 1945, c. 154, § 1.
- 70-157. Repealed. Laws 1945, c. 154, § 1.

70-101 Districts and corporations; furnish information; enforcement.

Notwithstanding any other provision of law regarding confidentiality of records, every district or corporation organized under Chapter 70 shall, upon request, furnish to any county attorney, any authorized attorney as defined in section 42-347, or the Department of Health and Human Services a utility service subscriber's name, social security number, and mailing and residence addresses only for the purposes of establishing and collecting child, spousal, and medical support and of conducting reviews under sections 43-512.12 to 43-512.18. Such information shall be used for no other purpose. An action may be filed in district court to enforce this section. For purposes of this section, utility service shall mean electrical, gas, water, telephone, garbage disposal, or waste disposal service.

Source: Laws 1994, LB 1224, § 82; Laws 1996, LB 1044, § 368; Laws 1997, LB 307, § 113.

Cross References

Records, withheld from public, see section 84-712.05.

- 70-102 Repealed. Laws 1945, c. 154, § 1.**
- 70-103 Repealed. Laws 1945, c. 154, § 1.**
- 70-104 Repealed. Laws 1945, c. 154, § 1.**
- 70-105 Repealed. Laws 1945, c. 154, § 1.**
- 70-106 Repealed. Laws 1945, c. 154, § 1.**
- 70-107 Repealed. Laws 1945, c. 154, § 1.**
- 70-108 Repealed. Laws 1945, c. 154, § 1.**
- 70-109 Repealed. Laws 1945, c. 154, § 1.**
- 70-110 Repealed. Laws 1945, c. 154, § 1.**

- 70-111 Repealed. Laws 1945, c. 154, § 1.
- 70-112 Repealed. Laws 1945, c. 154, § 1.
- 70-113 Repealed. Laws 1945, c. 154, § 1.
- 70-114 Repealed. Laws 1945, c. 154, § 1.
- 70-115 Repealed. Laws 1945, c. 154, § 1.
- 70-116 Repealed. Laws 1945, c. 154, § 1.
- 70-117 Repealed. Laws 1945, c. 154, § 1.
- 70-118 Repealed. Laws 1945, c. 154, § 1.
- 70-119 Repealed. Laws 1945, c. 154, § 1.
- 70-120 Repealed. Laws 1945, c. 154, § 1.
- 70-121 Repealed. Laws 1945, c. 154, § 1.
- 70-122 Repealed. Laws 1945, c. 154, § 1.
- 70-123 Repealed. Laws 1945, c. 154, § 1.
- 70-124 Repealed. Laws 1945, c. 154, § 1.
- 70-125 Repealed. Laws 1945, c. 154, § 1.
- 70-126 Repealed. Laws 1945, c. 154, § 1.
- 70-127 Repealed. Laws 1945, c. 154, § 1.
- 70-128 Repealed. Laws 1945, c. 154, § 1.
- 70-129 Repealed. Laws 1945, c. 154, § 1.
- 70-130 Repealed. Laws 1945, c. 154, § 1.
- 70-131 Repealed. Laws 1945, c. 154, § 1.
- 70-132 Repealed. Laws 1945, c. 154, § 1.
- 70-133 Repealed. Laws 1945, c. 154, § 1.
- 70-134 Repealed. Laws 1945, c. 154, § 1.
- 70-135 Repealed. Laws 1945, c. 154, § 1.
- 70-136 Repealed. Laws 1945, c. 154, § 1.
- 70-137 Repealed. Laws 1945, c. 154, § 1.
- 70-138 Repealed. Laws 1945, c. 154, § 1.
- 70-139 Repealed. Laws 1945, c. 154, § 1.
- 70-140 Repealed. Laws 1945, c. 154, § 1.
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- 70-142 Repealed. Laws 1945, c. 154, § 1.
- 70-143 Repealed. Laws 1945, c. 154, § 1.
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- 70-147 Repealed. Laws 1945, c. 154, § 1.
- 70-148 Repealed. Laws 1945, c. 154, § 1.
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- 70-152 Repealed. Laws 1945, c. 154, § 1.
- 70-153 Repealed. Laws 1945, c. 154, § 1.
- 70-154 Repealed. Laws 1945, c. 154, § 1.
- 70-155 Repealed. Laws 1945, c. 154, § 1.
- 70-156 Repealed. Laws 1945, c. 154, § 1.
- 70-157 Repealed. Laws 1945, c. 154, § 1.

ARTICLE 2

HYDROELECTRIC AND OTHER POWER DISTRICTS

Section

- 70-201. Repealed. Laws 1945, c. 155, § 1.
- 70-202. Repealed. Laws 1945, c. 155, § 1.
- 70-203. Repealed. Laws 1945, c. 155, § 1.
- 70-204. Repealed. Laws 1945, c. 155, § 1.
- 70-205. Repealed. Laws 1945, c. 155, § 1.
- 70-206. Repealed. Laws 1945, c. 155, § 1.
- 70-207. Repealed. Laws 1945, c. 155, § 1.
- 70-208. Repealed. Laws 1945, c. 155, § 1.
- 70-209. Repealed. Laws 1945, c. 155, § 1.
- 70-210. Repealed. Laws 1945, c. 155, § 1.
- 70-211. Repealed. Laws 1945, c. 155, § 1.
- 70-212. Repealed. Laws 1945, c. 155, § 1.
- 70-213. Repealed. Laws 1945, c. 155, § 1.
- 70-214. Repealed. Laws 1945, c. 155, § 1.
- 70-215. Repealed. Laws 1945, c. 155, § 1.
- 70-216. Repealed. Laws 1945, c. 155, § 1.
- 70-217. Repealed. Laws 1945, c. 155, § 1.
- 70-218. Repealed. Laws 1945, c. 155, § 1.
- 70-219. Repealed. Laws 1945, c. 155, § 1.
- 70-220. Repealed. Laws 1945, c. 155, § 1.
- 70-221. Repealed. Laws 1945, c. 155, § 1.
- 70-222. Repealed. Laws 1945, c. 155, § 1.
- 70-223. Repealed. Laws 1945, c. 155, § 1.
- 70-224. Repealed. Laws 1945, c. 155, § 1.
- 70-225. Repealed. Laws 1945, c. 155, § 1.

Section

- 70-226. Repealed. Laws 1945, c. 155, § 1.
- 70-227. Repealed. Laws 1945, c. 155, § 1.
- 70-228. Repealed. Laws 1945, c. 155, § 1.
- 70-229. Repealed. Laws 1945, c. 155, § 1.
- 70-230. Repealed. Laws 1945, c. 155, § 1.
- 70-231. Repealed. Laws 1945, c. 155, § 1.
- 70-232. Repealed. Laws 1945, c. 155, § 1.
- 70-233. Repealed. Laws 1945, c. 155, § 1.
- 70-234. Repealed. Laws 1945, c. 155, § 1.
- 70-235. Repealed. Laws 1945, c. 155, § 1.
- 70-236. Repealed. Laws 1945, c. 155, § 1.
- 70-237. Repealed. Laws 1945, c. 155, § 1.
- 70-238. Repealed. Laws 1945, c. 155, § 1.
- 70-239. Repealed. Laws 1945, c. 155, § 1.
- 70-240. Repealed. Laws 1945, c. 155, § 1.
- 70-241. Repealed. Laws 1945, c. 155, § 1.
- 70-242. Repealed. Laws 1945, c. 155, § 1.
- 70-243. Repealed. Laws 1945, c. 155, § 1.
- 70-244. Repealed. Laws 1945, c. 155, § 1.
- 70-245. Repealed. Laws 1945, c. 155, § 1.
- 70-246. Repealed. Laws 1945, c. 155, § 1.
- 70-247. Repealed. Laws 1945, c. 155, § 1.
- 70-248. Repealed. Laws 1945, c. 155, § 1.
- 70-249. Repealed. Laws 1945, c. 155, § 1.

70-201 Repealed. Laws 1945, c. 155, § 1.

70-202 Repealed. Laws 1945, c. 155, § 1.

70-203 Repealed. Laws 1945, c. 155, § 1.

70-204 Repealed. Laws 1945, c. 155, § 1.

70-205 Repealed. Laws 1945, c. 155, § 1.

70-206 Repealed. Laws 1945, c. 155, § 1.

70-207 Repealed. Laws 1945, c. 155, § 1.

70-208 Repealed. Laws 1945, c. 155, § 1.

70-209 Repealed. Laws 1945, c. 155, § 1.

70-210 Repealed. Laws 1945, c. 155, § 1.

70-211 Repealed. Laws 1945, c. 155, § 1.

70-212 Repealed. Laws 1945, c. 155, § 1.

70-213 Repealed. Laws 1945, c. 155, § 1.

70-214 Repealed. Laws 1945, c. 155, § 1.

70-215 Repealed. Laws 1945, c. 155, § 1.

70-216 Repealed. Laws 1945, c. 155, § 1.

70-217 Repealed. Laws 1945, c. 155, § 1.

70-218 Repealed. Laws 1945, c. 155, § 1.

- 70-219 Repealed. Laws 1945, c. 155, § 1.
- 70-220 Repealed. Laws 1945, c. 155, § 1.
- 70-221 Repealed. Laws 1945, c. 155, § 1.
- 70-222 Repealed. Laws 1945, c. 155, § 1.
- 70-223 Repealed. Laws 1945, c. 155, § 1.
- 70-224 Repealed. Laws 1945, c. 155, § 1.
- 70-225 Repealed. Laws 1945, c. 155, § 1.
- 70-226 Repealed. Laws 1945, c. 155, § 1.
- 70-227 Repealed. Laws 1945, c. 155, § 1.
- 70-228 Repealed. Laws 1945, c. 155, § 1.
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- 70-230 Repealed. Laws 1945, c. 155, § 1.
- 70-231 Repealed. Laws 1945, c. 155, § 1.
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- 70-233 Repealed. Laws 1945, c. 155, § 1.
- 70-234 Repealed. Laws 1945, c. 155, § 1.
- 70-235 Repealed. Laws 1945, c. 155, § 1.
- 70-236 Repealed. Laws 1945, c. 155, § 1.
- 70-237 Repealed. Laws 1945, c. 155, § 1.
- 70-238 Repealed. Laws 1945, c. 155, § 1.
- 70-239 Repealed. Laws 1945, c. 155, § 1.
- 70-240 Repealed. Laws 1945, c. 155, § 1.
- 70-241 Repealed. Laws 1945, c. 155, § 1.
- 70-242 Repealed. Laws 1945, c. 155, § 1.
- 70-243 Repealed. Laws 1945, c. 155, § 1.
- 70-244 Repealed. Laws 1945, c. 155, § 1.
- 70-245 Repealed. Laws 1945, c. 155, § 1.
- 70-246 Repealed. Laws 1945, c. 155, § 1.
- 70-247 Repealed. Laws 1945, c. 155, § 1.
- 70-248 Repealed. Laws 1945, c. 155, § 1.

70-249 Repealed. Laws 1945, c. 155, § 1.**ARTICLE 3****RIGHT-OF-WAY FOR POLE LINES****Cross References**

Eminent domain, power of public power districts, see section 70-670.

Municipalities, right-of-way along public roads outside corporate limits to waterworks, see section 18-413.

Railroads, power of eminent domain, see section 74-308.

Relocation of facilities, state or federal highway construction, see section 39-1304.02.

Section

- 70-301. Right-of-way; acquisition; procedure; approval.
- 70-302. Repealed. Laws 1963, c. 394, § 2.
- 70-303. Right-of-way; abandonment, effect of.
- 70-304. Right-of-way; acquisition; crop damage.
- 70-305. Right-of-way; damage to private property; procedure.
- 70-306. Placement of lines; procedure.
- 70-307. Placement of lines; violation; penalty.
- 70-308. Property within village or city; how treated.
- 70-309. Electrical transmission lines; state or federal highways; regulation by Department of Transportation.
- 70-310. Repealed. Laws 2009, LB 238, § 10.
- 70-311. Electric transmission or electric distribution lines; notice of road, road ditch improvement, or other projects; when given.
- 70-312. Electric transmission or electric distribution lines; notice of widening of roads; contents.
- 70-313. Electric transmission or electric distribution lines; liability; cost of removal.

70-301 Right-of-way; acquisition; procedure; approval.

Any public power district, corporation, or municipality that engages in the generation or transmission, or both, of electric energy for sale to the public for light and power purposes, the production, storage, or distribution of hydrogen for use in fuel processes, or the production or distribution, or both, of ethanol for use as fuel may acquire right-of-way over and upon lands, except railroad right-of-way and depot grounds, for the construction of pole lines or underground lines necessary for the conduct of such business and for the placing of all poles and constructions for the necessary adjuncts thereto, in the same manner as railroad corporations may acquire right-of-way for the construction of railroads. Such district, corporation, or municipality shall give public notice of the proposed location of such pole lines or underground lines with a voltage capacity of thirty-four thousand five hundred volts or more which involves the acquisition of rights or interests in more than ten separately owned tracts by causing to be published a map showing the proposed line route in a legal newspaper of general circulation within the county where such line is to be constructed at least thirty days before negotiating with any person, firm, or corporation to acquire easements or property for such purposes and shall consider all objections which may be filed to such location. After securing approval from the Public Service Commission and having complied with sections 70-305 to 70-309 and 86-701 to 86-707, such public power districts, corporations, and municipalities shall have the right to condemn a right-of-way over and across railroad right-of-way and depot grounds for the purpose of crossing the same. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1927, c. 107, § 1, p. 295; C.S.1929, § 70-401; R.S.1943, § 70-301; Laws 1951, c. 101, § 104, p. 495; Laws 1969, c. 545,

§ 1, p. 2199; Laws 1973, LB 187, § 7; Laws 1986, LB 1230, § 33; Laws 2002, LB 1105, § 467; Laws 2005, LB 139, § 1; Laws 2009, LB238, § 8.

The authority of a public power district to acquire right-of-way for transmission lines by eminent domain is conferred by this section. This section refers specifically and exclusively to the acquisition of "right-of-way over and upon lands" for the purpose of constructing overhead or underground transmission lines. It does not permit the acquisition of any other interest in land for any other purpose. The power of eminent domain conferred by this section reflects legislative intent that a public

power district may exercise the power of eminent domain to acquire right-of-way over public lands. *SID No. 1 of Fillmore County v. Nebraska Pub. Power Dist.*, 253 Neb. 917, 573 N.W.2d 460 (1998).

The procedure to condemn shall be exercised in the manner set forth in sections 76-704 to 76-724. *Krupicka v. Village of Dorchester*, 19 Neb. App. 242, 804 N.W.2d 37 (2011).

70-302 Repealed. Laws 1963, c. 394, § 2.

70-303 Right-of-way; abandonment, effect of.

If any pole line or underground line constructed under section 70-301 be abandoned for a period of five years, the right-of-way or easement acquired for its construction shall revert to the owner of the property affected.

Source: Laws 1927, c. 107, § 1, p. 295; C.S.1929, § 70-401; R.S.1943, § 70-303; Laws 1963, c. 394, § 1, p. 1252; Laws 1969, c. 545, § 2, p. 2200.

70-304 Right-of-way; acquisition; crop damage.

Any such public power district, corporation or municipality acquiring any easement or right-of-way hereunder shall be liable to the owner of the land affected for any damage to growing crops not included in the original settlement or award.

Source: Laws 1927, c. 107, § 2, p. 296; C.S.1929, § 70-402; R.S.1943, § 70-304; Laws 1969, c. 545, § 3, p. 2200.

70-305 Right-of-way; damage to private property; procedure.

Any person engaged in the generating or transmitting of electric current for sale, use, or purchase in the state for power or other purposes is granted the right-of-way for all necessary poles and wires along, within, and across any of the public highways of this state. Such person is liable for all damages to private property by reason of the use of the public highways for such purpose. Such damages shall be ascertained and determined in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1903, c. 117, § 1, p. 608; R.S.1913, § 7420; Laws 1917, c. 135, § 1, p. 320; Laws 1921, c. 259, § 1, p. 874; C.S.1922, § 7099; C.S.1929, § 86-303; Laws 1943, c. 231, § 2, p. 780; R.S.1943, § 86-305; Laws 1951, c. 101, § 124, p. 504; Laws 1967, c. 626, § 1, p. 2090; R.S.1943, (1999), § 86-305; Laws 2002, LB 1105, § 468.

Right given to utility companies to erect poles and wires along highways is valuable franchise right subject to taxation. *Northern Nebraska Power Co. v. Holt County*, 120 Neb. 724, 235 N.W. 92 (1931).

Under former section, company erecting transmission line may assume that line of highway is where trees and fences are

found, until line is otherwise fixed. *Saline County v. Blue River Power Co.*, 102 Neb. 758, 169 N.W. 785 (1918).

Former section did not apply to telephone companies which furnish telephone service exclusively. *Alt v. State*, 88 Neb. 259, 129 N.W. 432 (1911).

70-306 Placement of lines; procedure.

(1) Any electric wire shall be placed at least eighteen feet above all road crossings. Any electric poles and wires shall be so placed as not to interfere

with the public use of such highways, and if practicable, the poles shall be set upon the line of such highways.

(2) If any person engaged in distributing, generating, or transmitting electric current for power or other purposes by means of wires seeks to construct an electric wire over and across any railroad tracks, telegraph wires, or rights-of-way of any railroad company in this state and the electric wire intersects and crosses streets, highways, alleys, and other public thoroughfares, or elsewhere, such person and railroad company shall first endeavor to agree by a contract as to the manner and kind of crossing to be constructed. The contract shall at a minimum meet the requirements of sections 75-706 and 75-707 as to terms and conditions of such construction or placement and shall include the compensation, if any, to be awarded as damages. If no contract is reached, the person may proceed to have the same ascertained and determined in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1903, c. 117, § 1, p. 608; R.S.1913, § 7420; Laws 1917, c. 135, § 1, p. 320; Laws 1921, c. 259, § 1, p. 874; C.S.1922, § 7099; C.S.1929, § 86-303; Laws 1943, c. 231, § 2, p. 780; R.S.1943, § 86-306; Laws 1951, c. 101, § 125, p. 505; R.S.1943, (1999), § 86-306; Laws 2002, LB 1105, § 469.

Wires at railroad crossing must be kept so they do not interfere with work of trainmen. *Scherzer v. Lincoln Traction Co.*, 91 Neb. 407, 136 N.W. 62 (1912).

70-307 Placement of lines; violation; penalty.

If any person engaged in distributing, generating, or transmitting electric current for power or other purposes by means of wires constructs or places electric wires over the railroad tracks, telegraph wires, or rights-of-way of any railroad company in violation of section 70-305, section 75-708 shall apply.

Source: Laws 1903, c. 117, § 1, p. 608; R.S.1913, § 7420; Laws 1917, c. 135, § 1, p. 320; Laws 1921, c. 259, § 1, p. 874; C.S.1922, § 7099; C.S.1929, § 86-303; Laws 1943, c. 231, § 2, p. 780; R.S.1943, § 86-307; R.S.1943, (1999), § 86-307; Laws 2002, LB 1105, § 470.

70-308 Property within village or city; how treated.

Section 70-305 shall not be construed to grant any rights within the corporate limits of any village or city in this state.

Source: Laws 1903, c. 117, § 1, p. 608; R.S.1913, § 7420; Laws 1917, c. 135, § 1, p. 320; Laws 1921, c. 259, § 1, p. 874; C.S.1922, § 7099; C.S.1929, § 86-303; Laws 1943, c. 231, § 2, p. 780; R.S.1943, § 86-308; R.S.1943, (1999), § 86-308; Laws 2002, LB 1105, § 471.

70-309 Electrical transmission lines; state or federal highways; regulation by Department of Transportation.

If the public road, along, upon, across, or under which the right to construct, operate, and maintain the electrical transmission line is granted, is a state or federal highway, then the location and installation of the electrical transmission facilities, insofar as they pertain to the present and future use of the rights-of-way for highway purposes, shall be subject to reasonable regulations and

restrictions prescribed by the Department of Transportation. If the future use of the state or federal highway requires the moving or relocating of the facilities, then such facilities shall be removed or relocated by the owner, at the owner's cost and expense, and as directed by the Department of Transportation except as provided by section 39-1304.02.

Source: Laws 1943, c. 231, § 2, p. 780; R.S.1943, § 86-308.01; Laws 1957, c. 171, § 4, p. 593; R.S.1943, (1999), § 86-308.01; Laws 2002, LB 1105, § 472; Laws 2017, LB339, § 245.

70-310 Repealed. Laws 2009, LB 238, § 10.

70-311 Electric transmission or electric distribution lines; notice of road, road ditch improvement, or other projects; when given.

(1) Whenever any county or township road construction, widening, repair, or grading project or any road ditch improvement project requires, or can reasonably be expected to require, the performance of any work within ten feet of any electric transmission or electric distribution line, poles, or anchors, notice to the owner of such line, poles, or anchors shall be given by the respective county or township officers in charge of such projects. Such notice shall be given at least ninety days prior to the start of any work when, because of road construction, widening, repair, or grading or a road ditch improvement project, or for any other reason, it is necessary to relocate such line, poles, or anchors or if such work will compromise the structural integrity of the line, poles, or anchors.

(2) If a natural resources district will be altering a road structure or grading or moving earth for a flood control, recreation, or other project that requires, or can reasonably be expected to require, the performance of any work within ten feet of any electric transmission or electric distribution line, poles, or anchors, notice to the owner of such line, poles, or anchors shall be given by the respective natural resources district in charge of such projects. Such notice shall be given at least ninety days prior to the start of any work when, because of such road structure alteration or grading or moving earth, or for any other reason, it is necessary to relocate such line, poles, or anchors or if such work will compromise the structural integrity of the line, poles, or anchors.

Source: Laws 2002, LB 1105, § 474; Laws 2010, LB643, § 1.

70-312 Electric transmission or electric distribution lines; notice of widening of roads; contents.

The notice required by section 70-311 shall state the nature and location of the work to be done and the date on which such work is scheduled to commence. In the event of any change in the scheduled time of starting such work, notice of such change shall be given as soon as practicable.

Source: Laws 2002, LB 1105, § 475.

70-313 Electric transmission or electric distribution lines; liability; cost of removal.

Any owner of any electric transmission or electric distribution line failing to move its lines, poles, or anchors located near a public highway in accordance with the notice provided by section 70-311 shall be liable to the county or township for the cost of relocating such lines, poles, and anchors. When an

owner of such facilities located on private right-of-way is required to move such lines, poles, or anchors, it shall be at the expense of the county or township. The county or township shall be liable to the owner of any electric transmission or electric distribution line for loss of use of such line for failure to give the notice required by sections 70-311 and 70-312.

Source: Laws 2002, LB 1105, § 476.

ARTICLE 4

ELECTRIC COMPANIES; RATES

Section

70-401. Repealed. Laws 1963, c. 397, § 24.

70-402. Repealed. Laws 1963, c. 397, § 24.

70-403. Repealed. Laws 1963, c. 397, § 24.

70-404. Repealed. Laws 1963, c. 397, § 24.

70-405. Repealed. Laws 1963, c. 397, § 24.

70-406. Repealed. Laws 1963, c. 397, § 24.

70-407. Terms, defined.

70-408. Electric companies; rates; kilowatt-hour meter; demand meter; minimum charge authorized.

70-409. Electric companies; rate regulations; violation; penalty.

70-401 Repealed. Laws 1963, c. 397, § 24.

70-402 Repealed. Laws 1963, c. 397, § 24.

70-403 Repealed. Laws 1963, c. 397, § 24.

70-404 Repealed. Laws 1963, c. 397, § 24.

70-405 Repealed. Laws 1963, c. 397, § 24.

70-406 Repealed. Laws 1963, c. 397, § 24.

70-407 Terms, defined.

For the purpose of Chapter 70 the following words shall be construed to mean as follows:

(1) A kilowatt hour shall be deemed and considered to equal one thousand watts, or the energy resulting from an activity of one kilowatt continued for one hour, which equals about one and one-third horsepower hours;

(2) The word watt shall be construed to mean the practical unit of electric power, activity, or rate of work equivalent to 107 ergs or one joule per second, or approximately one seven-hundred-forty-sixth of a horsepower.

Source: Laws 1933, c. 60, § 1, p. 291; C.S.Supp.,1941, § 70-505; R.S. 1943, § 70-407; Laws 1981, LB 181, § 1.

70-408 Electric companies; rates; kilowatt-hour meter; demand meter; minimum charge authorized.

All charges, made for electrical energy for residential, commercial, and farm purposes by any person, firm, corporation, or municipality engaged in the sale of electrical energy in cities of the first class having a population of more than five thousand and less than twenty-five thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, cities of the second class,

villages, and unincorporated areas in Nebraska, shall be based on the amount of such energy actually furnished by the kilowatt-hour meter, together with such demand as may be registered or indicated by a demand meter, or as may be contracted for, to such purchaser. Such person, firm, corporation, or municipality may provide for either a penalty on or a discount from the amount of any bill to promote prompt payment thereof under uniform rules and regulations governing such penalty or discount. A reasonable minimum charge may be collected from purchasers of electrical energy by any such person, firm, corporation, or municipality, even though the charge for the amount of electrical energy actually furnished by the kilowatt-hour to such purchaser or user does not equal such minimum charge for the designated period of service. The provisions of sections 70-407 to 70-409 shall not be construed to affect any contract or franchise in existence at the time of the passage and approval of this section.

Source: Laws 1933, c. 60, § 2, p. 292; C.S.Supp.,1941, § 70-506; R.S. 1943, § 70-408; Laws 1949, c. 197, § 1, p. 576; Laws 2017, LB113, § 51.

Potentially conflicting interests within a class are incompatible with the maintenance of a true class action and this aspect may be disposed of upon motion for summary judgment. *Blankenship v. Omaha P. P. Dist.*, 195 Neb. 170, 237 N.W.2d 86 (1976).

The railway commission, hearing a complaint under stipulation that only the question of jurisdiction be determined, acted

prematurely in determining, without a full hearing being given, the question of validity of a minimum charge. *Miller v. Iowa-Nebraska Light & Power Co.*, 129 Neb. 757, 262 N.W. 855 (1935).

70-409 Electric companies; rate regulations; violation; penalty.

Any person, firm or corporation, their employees, agents or servants, who shall violate any of the provisions of sections 70-407 and 70-408 shall be guilty of a Class V misdemeanor.

Source: Laws 1933, c. 60, § 4, p. 292; C.S.Supp.,1941, § 70-508; R.S. 1943, § 70-409; Laws 1977, LB 39, § 136.

The railway commission does not have power to inflict the penalties provided for in this section. *Miller v. Iowa-Nebraska Light & Power Co.*, 129 Neb. 757, 262 N.W. 855 (1935).

ARTICLE 5

PUBLIC ELECTRIC PLANTS AND DISTRIBUTION; EXTENSION; SALE

Cross References

Monopolization in producing, selling, and distributing electricity, prohibited, see section 59-801 et seq.
Nebraska Power Review Board, see sections 70-1001 to 70-1027.

Section

- 70-501. Extension authorized; electric energy; sale; contracts authorized; payments from net earnings and profits.
- 70-502. Electric energy; sale or purchase; interconnections; contracts authorized.
- 70-503. Acquisition, extension, and improvements; pledge of earnings or profits authorized.
- 70-504. Sale, lease, or transfer; election and voter approval required; exceptions; procedure.
- 70-505. Sale, lease, or transfer; documents; filing.
- 70-506. Sale, lease, or transfer; statement and report; contents; filing.
- 70-507. Sale, lease, or transfer; statement and report; certification; filing.
- 70-508. Sale, lease, or transfer; false statement, report, or certificate; penalty.
- 70-509. Sale, lease, or transfer; evidence of valuation.
- 70-510. Sale, lease, or transfer; promotion expenditures; limitation.

§ 70-501

POWER DISTRICTS AND CORPORATIONS

Section

- 70-511. Sale, lease, or transfer; excessive promotion expenditures; violation; penalty.
- 70-512. Sale, lease, or transfer; excessive promotion expenditures; action to invalidate; procedure.
- 70-513. Sale, lease, or transfer; promotion expenditures; statement.
- 70-514. Sale, lease, or transfer; promotion expenditures; failure to file statement; penalty.
- 70-515. Applicability of laws.

70-501 Extension authorized; electric energy; sale; contracts authorized; payments from net earnings and profits.

Any city, village, or public electric light and power district within the state, which may own or operate, or hereafter acquire or establish, any electric light and power plant, distribution system and transmission lines may, at the time of or at any time after such acquisition or establishment, extend the same beyond its boundaries, and for that purpose is hereby authorized and empowered to construct, purchase, lease, or otherwise acquire, and to maintain, improve, extend and operate electric light and power plants, distribution systems and transmission lines, outside of the boundaries of such city, village, or public electric light and power district, for such distance and over such territory within this state as may be deemed expedient. In the exercise of the powers granted by this section any such city, village, or public electric light and power district may enter into contracts to furnish and sell electrical energy to any person, firm, association, corporation, municipality, or public electric light and power district. However, no such construction, purchase, lease, acquisition, improvement or extension of any such additional plant, distribution system or transmission lines shall be paid for except out of the net earnings and profits of one or more or all of the electric light and power plants, distribution systems and transmission lines of such city, village, or public electric light and power district. The provisions of sections 70-501 to 70-515 shall be deemed cumulative, and the authority herein granted to cities, villages, and public electric light and power districts shall not be limited or made inoperative by any existing statute.

Source: Initiative Law 1930, No. 324, § 1; Laws 1931, c. 116, § 1, p. 336; C.S.Supp.,1941, § 70-601; R.S.1943, § 70-501.

Provisions of this section did not operate to prevent a public power district from contracting with second-class city to furnish electric power at wholesale for period of twenty-five years. *City of O'Neill v. Consumers P. P. Dist.*, 179 Neb. 773, 140 N.W.2d 644 (1966).

Scope of this section was limited by title to original act. *Schroll v. City of Beatrice*, 169 Neb. 162, 98 N.W.2d 790 (1959).

City cannot issue revenue bonds without an authorizing election for purchase of completely new electric power plant. *Nacke v. City of Hebron*, 155 Neb. 739, 53 N.W.2d 564 (1952).

Where a municipality is given power to furnish public utility service beyond its corporate limits, it has the right to provide service within the corporate boundaries of another municipal corporation. *City of Curtis v. Maywood Light Co.*, 137 Neb. 119, 288 N.W. 503 (1939).

Constitutionality of this and succeeding sections in this article was raised but not decided since defendants were estopped to assail statute. *State ex rel. Sorensen v. Southern Nebraska Power Co.*, 131 Neb. 472, 268 N.W. 284 (1936).

Neither express nor implied power is conferred upon municipal corporations not already engaged in generation or distribution of electrical energy to acquire an electric light and power plant and to pay for it by pledge of future earnings therefrom. *Interstate Power Co. v. City of Ainsworth*, 125 Neb. 419, 250 N.W. 649 (1933).

This section empowers a city to acquire by condemnation power plant properties and distribution systems located outside its territorial limits but it cannot be compelled to extend its facilities inside the corporate boundaries of another municipality. *Central Power Co. v. Nebraska City*, 112 F.2d 471 (8th Cir. 1940).

70-502 Electric energy; sale or purchase; interconnections; contracts authorized.

For the purpose of selling or purchasing electrical energy for lighting, heating or power purposes, any city, village, or public electric light and power

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district in this state is hereby authorized to enter into agreements to connect and interconnect its electric light and power plants, distribution system and transmission lines with the electric light and power plant, distribution system or transmission lines of any one or more other cities, villages, or public electric light and power districts in this state, upon such terms and conditions as may be agreed upon between the contracting cities, villages, and public power districts.

Source: Initiative Law 1930, No. 324, § 2; Laws 1931, c. 116, § 2, p. 337; C.S.Supp.,1941, § 70-602; R.S.1943, § 70-502.

This section does not prevent a second-class city from contracting for wholesale power requirement if and when city acquired distribution system. *City of O'Neill v. Consumers P. P. Dist.*, 179 Neb. 773, 140 N.W.2d 644 (1966).

The provisions of this section were modified by legislative act creating the Nebraska Power Review Board. *City of Auburn v. Eastern Nebraska Public Power Dist.*, 179 Neb. 439, 138 N.W.2d 629 (1965).

This section did not operate to confer power and authority contrary to petition for creation of district. *Schroll v. City of Beatrice*, 169 Neb. 162, 98 N.W.2d 790 (1959).

A municipality owning and operating a public power plant may extend its lines into another municipal corporation's boundaries only upon contract, agreement, or franchise. *Central Power Co. v. Nebraska City*, 112 F.2d 471 (8th Cir. 1940).

70-503 Acquisition, extension, and improvements; pledge of earnings or profits authorized.

In lieu of the issuance of bonds or the levy of taxes as otherwise by law provided, and in lieu of any other lawful methods or means of providing for the payment of indebtedness, any city, village, or public electric light and power district within this state shall have the power and authority by and through its governing body or board of directors, to provide for or to secure the payment of the cost or expenses of purchasing, constructing, or otherwise acquiring, extending and improving any real or personal property necessary or useful in its operation of any electric light and power plant, distribution system or transmission lines, by pledging, assigning, or otherwise hypothecating, the net earnings or profits of such electric light and power district, city or village, derived, or to be derived, from the operation of such electric light and power plant, distribution system or transmission lines, and to that end, to enter into such contracts and to issue such warrants or debentures as may be proper to carry out the provisions of this section.

Source: Initiative Law 1930, No. 324, § 3; Laws 1931, c. 116, § 3, p. 337; C.S.Supp.,1941, § 70-603; R.S.1943, § 70-503.

Where city does not own light plant, revenue bonds for construction of same cannot be issued without an authorizing election. *Nacke v. City of Hebron*, 155 Neb. 739, 53 N.W.2d 564 (1952).

Revenue bonds for extension or enlargement of existing electric distribution system can be issued without vote of electors. *Slepicka v. City of Wilber*, 150 Neb. 376, 34 N.W.2d 646 (1948).

A village may extend or enlarge its existing electric light plant and issue warrants pledging the future earnings of the plant in

consideration therefor without obligating the municipality for their payment. *Southern Nebraska Power Co. v. Village of Deshler*, 130 Neb. 598, 265 N.W. 880 (1936).

In a condemnation proceeding by a city against the property of a power company, the company cannot raise the question of how the city will obtain funds to pay for the property taken. *Central Power Co. v. Nebraska City*, 112 F.2d 471 (8th Cir. 1940).

70-504 Sale, lease, or transfer; election and voter approval required; exceptions; procedure.

In the following cases, a sale, lease, or transfer of any electric light or power plant, distribution system, or transmission line shall not be valid unless the sale, lease, or transfer is authorized at any state or municipal election, including a primary or special election, except as otherwise provided in this section, and approved by sixty percent of the electors voting on the proposed matter, except that an election and such approval shall not be required when the sale, lease, or transfer is part of a merger or consolidation of a public power district:

(1) By any city or village to any private person, firm, association, corporation, or public power district, except that any city or village may by resolution of the city council or board of trustees sell, lease, or transfer all or part of its electric light or power plant, distribution system, or transmission lines to any public power district or an electric cooperative, which cooperative has an approved retail service area adjoining such city or village, but such transaction shall not be consummated nor become effective until thirty days' notice of the transaction has been given by the governing body by publication once each week for three successive weeks in such city or village or, if no newspaper is published therein, then by posting in five or more public places therein. If within thirty days after the last publication of such notice or posting thereof a referendum petition signed by qualified electors of such city or village equal in number to at least twenty percent of the vote cast at the last general municipal election held therein is filed with the municipal clerk, such transaction shall not become effective until it has been approved by a vote of the electors of such municipality at any general or special municipal election. If a majority of the voters voting on the issue vote against such transaction, the transaction shall not become effective. If no such petitions are filed, the transaction shall become effective at the expiration of such thirty-day period. The power district shall charge fair, reasonable, and nondiscriminatory rates so adjusted as, in a fair and equitable manner, to confer upon and distribute among its customers the benefits of a successful and efficient operation and conduct of the business of the district; or

(2) By any public power district operating lines, owning lines, or operating and owning lines in less than thirteen counties in this state to any other public power district, except (a) where transmission or distribution lines extend into another power district and the board of directors of the selling power district, by resolution entered on its records, determines that such transmission or distribution lines would serve customers more advantageously in the purchasing power district and that the sale thereof should be made or (b) sales of any surplus equipment which the selling district, by resolution adopted by its board of directors and entered on its records, determines that it does not then need and is needed by the purchasing district, which sales are hereby expressly authorized to be made. Except for the referendum election provided for in subdivision (1) of this section, notice of the submission of the proposition shall be given by publication thereof three consecutive weeks in a legal newspaper published and of general circulation in such city, village, or public power district or, if no newspaper is published therein, by posting in five or more public places therein. Any elections herein required in public power districts or public power and irrigation districts shall be held at the same time and in connection with the next regular primary or general election in the state thereafter at which directors of the public power district are to be nominated or elected. Any proposals for the sale of lines or other property required to be submitted to an election under the provisions of this section shall be certified by the board of directors of the district selling or disposing of the property to the county clerk of the respective county or counties wherein such election of directors is to be held in the form of a question to be submitted upon the ballot not less than thirty days before the election. The county clerks to whom such certificates are submitted shall cause the same question submitted by the board of directors to be placed upon the same ballot and in proximity to the names of the directors to be nominated or elected in the same district at the next primary or general election. The results of the election with relation to the proposal

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shall be counted, canvassed, and certified in the same manner as the other results of the election.

Source: Initiative Law 1930, No. 324, § 4; Laws 1931, c. 116, § 4, p. 338; C.S.Supp.,1941, § 70-604; Laws 1943, c. 144, § 1, p. 505; R.S. 1943, § 70-504; Laws 1945, c. 156, § 1, p. 513; Laws 1947, c. 225, § 1, p. 718; Laws 1965, c. 58, § 5, p. 269; Laws 1969, c. 83, § 5, p. 421; Laws 1990, LB 907, § 1.

Cross References

For provisions relating to public power districts, see sections 70-601 to 70-682.

This statute, which authorizes sale or lease of electrical stations, does not require sale proceeds to benefit electrical utility customers within the municipality. *Nebraska P. P. Dist. v. City of York*, 212 Neb. 747, 326 N.W.2d 22 (1982).

Section was not applicable to transaction fully carried out before act became effective. *Babson v. Village of Ulysses*, 155 Neb. 492, 52 N.W.2d 320 (1952).

Where election was called under this section, incurring of expense in excess of amount allowed per voter was violation of act. *State ex rel. Sorensen v. Southern Nebraska Power Co.*, 131 Neb. 472, 268 N.W. 284 (1936).

70-505 Sale, lease, or transfer; documents; filing.

In order to consummate and complete the sale, lease, or transfer of any electric light and power plant, distribution system, or transmission lines by any city, village, or public electric light and power district of this state, to any private person, firm, association, or corporation, there shall be filed in the office of the Nebraska Power Review Board of this state, prior to any delivery or change of possession, control, or management under such sale, lease, or transfer, true and exact duplicate signed copies of all agreements, conveyances, contracts, franchises, deeds, leases, bills of sale, and other instruments, under which such sale, lease, or transfer is to be made. Said instruments shall be certified to under the oath of the executive or presiding officers of the seller and purchaser, respectively, as such true and exact duplicates.

Source: Initiative Law 1930, No. 324, § 5; Laws 1931, c. 116, § 5, p. 338; C.S.Supp.,1941, § 70-605; R.S.1943, § 70-505; Laws 1981, LB 181, § 2.

70-506 Sale, lease, or transfer; statement and report; contents; filing.

At the same time, and accompanying said documents and instruments of sale and transfer, there shall be filed with the Nebraska Power Review Board a statement and report, in form and detail to be approved by the Nebraska Power Review Board and the Attorney General, clearly setting forth the following facts and data: (1) The location and detailed description, including source and methods of generation, of all the property involved in the sale, lease, or transfer; (2) the dates of the construction, purchase, or other acquisition, by such municipality, or public electric light and power district, of such power plant, distribution system, or transmission lines, including all replacements, extensions, repairs, and betterments, together with a detailed statement of the actual cost; (3) a detailed description of such parts of the utility to be sold as, between the time of acquisition thereof and the time of the sale under consideration, shall have become obsolete, or shall have been sold, transferred, lost, destroyed, abandoned, or otherwise disposed of by such municipality or public electric light and power district, and the cost of such part of the utility, including extensions or additions thereto; and (4) a complete schedule of the rates and charges made or levied by such municipality or public electric light and power district for electric current, and a full and complete statement

showing the financial condition and the receipts and disbursements of such municipality or public power district in the operation of the utility during the preceding three-year period, and a statement of the bonded indebtedness, if any, of such municipality or public power district in connection with its ownership or operation of the utility, including the amount of all bonds issued and paid.

Source: Initiative Law 1930, No. 324, § 5; Laws 1931, c. 116, § 5, p. 338; C.S.Supp.,1941, § 70-605; R.S.1943, § 70-506; Laws 1981, LB 181, § 3.

70-507 Sale, lease, or transfer; statement and report; certification; filing.

Such statement and report shall be certified and sworn to as correct by the presiding officer of the governing body of such municipality or public electric light and power district, as the case may be, and shall also have thereto attached the certificate and oath of the presiding officer, or other duly authorized executive officer of the purchaser, under the seal of the purchaser, if a corporation, that the purchaser of the utility has examined the statement and report, has investigated the facts therein set forth, believes the statement and report to be true and correct, and that the proposed purchase of the utility has been made with reference to and in reliance upon the facts, situation and circumstances set forth in the statement and report. The filing of the instruments, the statement and report, certified as herein required, is hereby made a condition precedent to the validity of any such sale, lease or transfer.

Source: Initiative Law 1930, No. 324, § 5; Laws 1931, c. 116, § 5, p. 338; C.S.Supp.,1941, § 70-605; R.S.1943, § 70-507.

70-508 Sale, lease, or transfer; false statement, report, or certificate; penalty.

Whoever shall make, utter or subscribe to any statement and report, or certificate, required under the provisions of sections 70-506 and 70-507, knowing or having reason to believe that any such statement and report, or certificate, is false, shall be guilty of a Class IV felony.

Source: Initiative Law 1930, No. 324, § 6; Laws 1931, c. 116, § 6, p. 340; C.S.Supp.,1941, § 70-606; R.S.1943, § 70-508; Laws 1977, LB 39, § 137.

70-509 Sale, lease, or transfer; evidence of valuation.

Any instrument, statement and report, or certificate filed with the Nebraska Power Review Board, as provided for in Chapter 70, article 5, or certified copies thereof, shall be competent evidence in any hearing or proceeding involving the valuation of the electric light and power plant, distribution system, or transmission lines covered by the statement and report and certificate, for ratemaking purposes, taxation, or in any other matter in which the facts and statements in such instrument, statement and report, or certificate, may be involved or drawn in question, and the purchaser thereof and his, her, or its successor or assigns, shall be forever estopped to deny the facts set forth in such instrument, statement and report, or certificate.

Source: Initiative Law 1930, No. 324, § 6; Laws 1931, c. 116, § 6, p. 340; C.S.Supp.,1941, § 70-606; R.S.1943, § 70-509; Laws 1981, LB 181, § 4.

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70-510 Sale, lease, or transfer; promotion expenditures; limitation.

No private person, firm, association or corporation proposing to purchase, lease, or otherwise acquire any electric light and power plants, distribution system or transmission lines, from any city, village, or public electric light and power district of this state, nor any one on behalf or for the benefit of such proposed purchaser, may, in order to promote or bring about such sale, lease or transfer, pay out, contribute or expend, directly or indirectly, money or other valuable thing in excess of three thousand dollars nor, in any event, in excess of a sum in number of dollars greater than the number of the qualified voters in such municipality or public electric light and power district, based on the total vote cast for Governor at the last general election.

Source: Initiative Law 1930, No. 324, § 7; Laws 1931, c. 116, § 7, p. 340; C.S.Supp.,1941, § 70-607; R.S.1943, § 70-510.

Where amount was paid for promotion of sale in excess of statutory amount, it was within prohibition of this section. State ex rel. Sorensen v. Southern Nebraska Power Co., 131 Neb. 472, 268 N.W. 284 (1936).

70-511 Sale, lease, or transfer; excessive promotion expenditures; violation; penalty.

Any person, firm or corporation, violating any provision of section 70-510 shall be guilty of a Class IV felony.

Source: Initiative Law 1930, No. 324, § 7; Laws 1931, c. 116, § 7, p. 340; C.S.Supp.,1941, § 70-607; R.S.1943, § 70-511; Laws 1977, LB 39, § 138.

70-512 Sale, lease, or transfer; excessive promotion expenditures; action to invalidate; procedure.

Any violation of section 70-510 shall nullify and render wholly void any such proposed purchase, lease or acquisition; *Provided, however*, any action to set aside and render invalid any such sale, lease, transfer or acquisition, under the provisions of said section, shall be brought, in the district court of the county in which such municipality or public electric light and power district, or a portion thereof, is located, by one or more electors of such municipality or public electric light and power district, or by such municipality or district itself, or by the State of Nebraska, within ninety days after the holding of the election at which the question voted on shall have been submitted.

Source: Initiative Law 1930, No. 324, § 7; Laws 1931, c. 116, § 7, p. 340; C.S.Supp.,1941, § 70-607; R.S.1943, § 70-512.

70-513 Sale, lease, or transfer; promotion expenditures; statement.

Within ten days after any election upon the proposition of the sale, lease or transfer of any electric light or power plant, distribution system or transmission lines, as provided by section 70-504, the person, firm, association or corporation proposing to make or secure such purchase, lease or transfer, shall file with the Secretary of State a sworn statement, in form and detail to be approved by the Attorney General, showing all expenditures made and all obligations incurred by such proposed purchaser, directly or indirectly, in connection with or pertaining to such proposed sale, lease or transfer, and in connection with or pertaining to such election.

Source: Initiative Law 1930, No. 324, § 8; Laws 1931, c. 116, § 8, p. 341; C.S.Supp.,1941, § 70-608; R.S.1943, § 70-513.

70-514 Sale, lease, or transfer; promotion expenditures; failure to file statement; penalty.

Any person, firm, association or corporation who shall fail or refuse to file such statement, or who shall subscribe to such statement, knowing the same to be false, shall be guilty of a Class IV felony.

Source: Initiative Law 1930, No. 324, § 8; Laws 1931, c. 116, § 8, p. 341; C.S.Supp.,1941, § 70-608; R.S.1943, § 70-514; Laws 1977, LB 39, § 139.

70-515 Applicability of laws.

All provisions of law, now applicable to electric light and power corporations as regards the use and occupation of the public highways, and the manner or method of construction and physical operation of plants, systems, and transmission lines, shall be applicable, as nearly as may be, to municipalities and public electric light and power districts in their exercise of the powers and functions, and in their performance of the duties, conferred or imposed upon them under the provisions of sections 70-501 to 70-515.

Source: Initiative Law 1930, No. 324, § 9; Laws 1931, c. 116, § 9, p. 342; C.S.Supp.,1941, § 70-609; R.S.1943, § 70-515; Laws 1951, c. 101, § 105, p. 496.

Public power and irrigation district has the right to exercise the power of eminent domain in the acquisition of property. *Snyder v. Platte Valley Public Power & Irr. Dist.*, 144 Neb. 308, 13 N.W.2d 160 (1944).

ARTICLE 6

PUBLIC POWER AND IRRIGATION DISTRICTS

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- 70-601. Terms, defined.
- 70-601.01. Ethanol production and distribution; hydrogen production and distribution; legislative findings.
- 70-602. District; creation; general powers.
- 70-603. District; organization; amendment of charter; petition.
- 70-604. District; petition; contents.
- 70-604.01. Chartered territory; boundaries.
- 70-604.02. Operating area, defined.
- 70-604.03. Operating area; boundary lines; establish; precinct division; request by retail customer to vote or hold office; certification procedure.
- 70-604.04. Operating area; electric utility not included, when; wholesale supplier; duties.
- 70-604.05. District; noncompliance; complaint; hearing; notice; order; failure to comply; penalty.
- 70-604.06. Nebraska Power Review Board; final action; appeal; manner.
- 70-604.07. Repealed. Laws 1986, LB 949, § 17.
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- 70-611. Board of directors; election; certified notice; publication.
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PUBLIC POWER AND IRRIGATION DISTRICTS

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- 70-613. Repealed. Laws 1975, LB 453, § 61.
 - 70-614. Repealed. Laws 1994, LB 76, § 615.
 - 70-614.01. Repealed. Laws 1967, c. 418, § 16.
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 - 70-616. Board of directors; oath.
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 - 70-619. Board of directors; qualifications; eligibility to serve.
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 - 70-623. Fiscal year; annual audit; filing.
 - 70-623.01. Repealed. Laws 1981, LB 181, § 66.
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 - 70-624. Officers; compensation; approval; publication; violation; penalty.
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 - 70-624.03. Board of directors; plan of insurance for benefit of employees and dependents; may establish.
 - 70-624.04. Directors and employees; hold other elective office; contract not void or voidable; when.
 - 70-625. Public power district; powers; restrictions.
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 - 70-626.03. Transmission facilities of other power agency; available for transmission of electric energy; rates.
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 - 70-628. District; additional powers.
 - 70-628.01. Joint exercise of powers by districts; agreement; terms and conditions; agent; powers and duties; prudent utility practice, defined; liabilities; sale, lease, merger, or consolidation; procedure.
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 - 70-635.01. Repealed. Laws 1967, c. 422, § 2.

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- Section
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70-641. Contracts; bonds; laws applicable.
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70-601 Terms, defined.

For purposes of Chapter 70, article 6, unless the context otherwise requires:

(1) District means a public power district, public irrigation district, or public power and irrigation district, organized under Chapter 70, article 6, either as originally organized or as the same may from time to time be altered or extended, and includes, when applicable, rural public power districts organized under Chapter 70, article 8, and subject to Chapter 70, article 6;

(2) Municipality, when used in relation to the organization or charter of a public power district or to the election of successors to the board of directors of a public power district, means any county, city, incorporated village, or voting precinct in this state;

(3) Governing body, whenever used in relation to any municipality, means the duly constituted legislative body or authority within and for such municipality as a public corporation and governmental subdivision. When used with reference to a voting precinct, governing body means the county board of the county in which the precinct is located;

(4) Irrigation works means any and all sites, dams, dikes, abutments, reservoirs, canals, flumes, ditches, head gates, machinery, equipment, materials, apparatus, and all other property used or useful for the storage, diversion, damming, distribution, sale, or furnishing of water supply or storage of water for irrigation purposes or for flood control, or used or useful for flood control, whether such works be operated in conjunction with or separately from electric light and power plants or systems;

(5) Power includes any and all electrical energy and capacity generated, produced, transmitted, distributed, bought, or sold, hydrogen produced, stored, or distributed, and ethanol produced for purposes of lighting, heating, power, and any and every other useful purpose whatsoever;

(6) Plant or system includes any and all property owned, used, operated, or useful for operation in the district's business, including the generation by means of water power, steam, or other means or in the transmission, distribution, sale, or purchase of electrical energy, hydrogen, or ethanol for any and every useful purpose, including any and all irrigation works which may be owned, used, or operated in conjunction with such power plant or system;

(7) Energy equipment includes, but is not limited to, equipment or facilities used or useful to generate, produce, transmit, or distribute power, heated or chilled water, or steam for use by the district or the district's commercial and industrial customers; and

(8) Public power industry means public power districts, public power and irrigation districts, municipalities, registered groups of municipalities, electric cooperatives, electric membership associations, joint entities formed under the Interlocal Cooperation Act, joint public agencies formed under the Joint Public Agency Act, agencies formed under the Municipal Cooperative Financing Act, and any other governmental entities providing electric service.

Source: Laws 1933, c. 86, § 1, p. 338; Laws 1937, c. 152, § 1, p. 577; Laws 1939, c. 88, § 2, p. 386; C.S.Supp.,1941, § 70-701; R.S. 1943, § 70-601; Laws 1965, c. 403, § 1, p. 1290; Laws 1981, LB 181, § 5; Laws 1985, LB 2, § 4; Laws 1986, LB 1230, § 34; Laws 1986, LB 949, § 2; Laws 1997, LB 658, § 5; Laws 2004, LB 969, § 12; Laws 2005, LB 139, § 2.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.
Municipal Cooperative Financing Act, see section 18-2401.

- 1. Constitutionality
- 2. Liability
- 3. Powers
- 4. Miscellaneous

1. Constitutionality

Public power and irrigation act, sustained against contention of unconstitutionality on grounds that the act was never properly passed, that the title contains more than one subject in violation of section 14, article 3 of the Constitution of Nebraska, and that the act authorizes the taking of private property without payment of just compensation therefor. State ex rel. Loseke v. Fricke, 126 Neb. 736, 254 N.W. 409 (1934).

2. Liability

District was not liable for maintenance of bridge which was not constructed under its supervision. Platte Valley P. P. & I. Dist. v. County of Lincoln, 163 Neb. 196, 79 N.W.2d 61 (1956).

In action for damages resulting from flooding of plaintiff's premises by floodwaters from canal of irrigation district, negligence of irrigation district was for jury. Webb v. Platte Valley Public Power & Irrigation District, 146 Neb. 61, 18 N.W.2d 563 (1945).

Right of landowners to recover consequential damages was governed in federal court by state law. Feltz v. Central Nebraska P. P. & I. Dist., 124 F.2d 578 (8th Cir. 1942).

3. Powers

Powers of grid system were those provided by this article. Wittler v. Baumgartner, 180 Neb. 446, 144 N.W.2d 62 (1966).

Public power district and city were each authorized to furnish electric current in area adjacent to city. State ex rel. Dawson County Feed Products v. Omaha P. P. Dist., 174 Neb. 350, 118 N.W.2d 7 (1962).

Purchase of land for a right-of-way carries with it all the incidents of the power of eminent domain. Clary v. State, 171 Neb. 691, 107 N.W.2d 429 (1961).

4. Miscellaneous

A public power district which does not provide at least 50 percent of the retail or wholesale power requirements of a municipality cannot include that municipality within its charter area. In re Boundaries of McCook P. P. Dist., 217 Neb. 11, 347 N.W.2d 554 (1984).

Members of public power system were corporations. State ex rel. League of Municipalities v. Loup River Public Power Dist., 158 Neb. 160, 62 N.W.2d 682 (1954).

It is the duty of district organized under this section that builds structures across natural drainways to provide for the natural passage of all waters which may be reasonably anticipated to drain there. Halligan v. Elander, 147 Neb. 156, 22 N.W.2d 647 (1946).

Public corporation organized to use waters of natural stream for irrigation and for development of electric power is a governmental subdivision, and all its property is exempt from taxation. Platte Valley Public Power and Irrigation District v. County of Lincoln, 144 Neb. 584, 14 N.W.2d 202 (1944).

70-601.01 Ethanol production and distribution; hydrogen production and distribution; legislative findings.

(1) The Legislature finds and declares that:

(a) Nebraska has been and will continue to be a state which is dependent on a stable, income-producing farm sector;

(b) When agriculture fails to produce adequate income for farmers, ranchers, and agricultural business interests within this state, the economic well-being of the state and its citizens will be threatened;

(c) There currently exists a chronic grain surplus within the state because of underutilization of grain products, and prices for grain remain unreasonably low because of such surplus and underutilization;

(d) Enlargement of the ethanol industry within the state would result in additional utilization of surplus grain;

(e) Ethanol will be increasingly in demand in the marketplace because of its efficacy as an octane enhancer and fuel extender;

(f) The public power industry within the state is experienced in the production and transmission of electrical power; and

(g) The experience of the public power industry could be used in the development of the production and distribution of ethanol and in the enhancement of the economic well-being of this state.

(2) The Legislature further finds:

(a) Hydrogen production and distribution may serve as a viable alternative in the marketplace for use in fuel processes;

(b) The public power industry within the state is experienced in the production and transmission of electrical power; and

(c) The experience of the public power industry could be used in the development of the production, storage, and distribution of hydrogen for use in fuel processes and in the enhancement of the economic well-being of this state.

Source: Laws 1986, LB 1230, § 32; Laws 2005, LB 139, § 3.

70-602 District; creation; general powers.

A district may be created as hereinafter provided and, when so created, shall be a public corporation and political subdivision of this state and may sue or be sued in its corporate name. A district may be composed of the territory of one or more municipalities as defined in subsection (2) of section 70-601, whether contiguous or otherwise. Nothing in Chapter 70, article 6, shall be construed to prevent the organization of a district within or partly within the territorial boundaries of another district organized hereunder, so long as the plants, systems, and works, the operation of the same, the exercise of powers, and the assumption of duties and responsibilities, of or on the part of one district, do not nullify, conflict with, or materially affect those of, or on the part of, another district.

Source: Laws 1933, c. 86, § 2, p. 339; Laws 1937, c. 152, § 2, p. 578; C.S.Supp., 1941, § 70-702; R.S. 1943, § 70-602; Laws 1981, LB 181, § 6; Laws 1986, LB 949, § 3.

Rural public power district is a public corporation and political subdivision of the state. *York County Rural P. P. Dist. v. O'Connor*, 172 Neb. 602, 111 N.W.2d 376 (1961).

A power district is a political subdivision of the state. *United Community Services v. Omaha Nat. Bank*, 162 Neb. 786, 77 N.W.2d 576 (1956).

Conflict between powers of two districts is to be determined at date of organization of later district. *Custer Public Power Dist. v. Loup River Public Power Dist.*, 162 Neb. 300, 75 N.W.2d 619 (1956).

A public power district is a public corporation and a political subdivision of the state. *Consumers Public Power Dist. v. Eldred*, 146 Neb. 926, 22 N.W.2d 188 (1946).

Service in the same territory by two public power districts is not forbidden where there is no conflict in the exercise of powers and assumption of duties by each, and, in issuing a certificate of approval to a proposed district, the Department of Water Resources is not required to include a finding that no conflict exists. *State ex rel. Wright v. Eastern Nebraska Public Power District*, 130 Neb. 683, 266 N.W. 594 (1936); *State ex rel. Wright v. Lancaster County Rural Public Power District*, 130 Neb. 677, 266 N.W. 591 (1936).

70-603 District; organization; amendment of charter; petition.

A district may be organized and may amend its charter under Chapter 70, article 6, by filing in the office of the Nebraska Power Review Board a petition

in compliance with requirements set forth in Chapter 70, article 6, and receiving the approval of the petition by the Nebraska Power Review Board.

Source: Laws 1933, c. 86, § 3, p. 339; Laws 1937, c. 152, § 3, p. 579; C.S.Supp.,1941, § 70-703; Laws 1943, c. 145, § 1(1), p. 507; R.S.1943, § 70-603; Laws 1981, LB 181, § 7; Laws 1986, LB 949, § 4; Laws 2009, LB53, § 1.

Initial step toward the organization of a district is the filing of a petition. Schroll v. City of Beatrice, 169 Neb. 162, 98 N.W.2d 790 (1959).

70-604 District; petition; contents.

The petition shall be addressed to the Nebraska Power Review Board and state in substance that it is the intent and purpose of the petitioners by such petition to create or amend the charter of a district subject to approval by the Nebraska Power Review Board. The petition shall state and contain:

(1) The name of the district, which name shall contain, if the district is to engage or is engaged in the electric light and power business, hydrogen production, storage, or distribution, or ethanol production and distribution, the words public power district. If the district is to engage or is engaged in the business of owning and operating irrigation works, the name shall include the words public irrigation district, except that if electric light and power are the major business of such district, it need not include these words in its name. A district may be organized to engage only in the electric light and power business, the production, storage, or distribution of hydrogen, and the production and distribution of ethanol, only in the business of owning and operating irrigation works, in any business identified in section 70-625, or in all of such businesses;

(2) The names of the municipalities constituting the district and the boundaries of such district;

(3) A general description of the nature of the business which the district intends to engage in and, for the original creation of a district, the location and method of operation of the proposed power plants and systems or irrigation works of the district;

(4) The location of the principal place of business of the district;

(5) A statement that the district shall not have the power to levy taxes nor to issue general obligation bonds;

(6) When the Nebraska Power Review Board finds from the evidence that subdivisions, from which directors are to be elected or appointed, are necessary or desirable, such subdivisions shall be of substantially equal population, except that no district shall be required to redistrict its subdivisions for purposes of equalizing population more frequently than every ten years following publication of the most recent federal decennial census; and

(7) Except in a district having within its boundaries twenty-five or more cities or villages, the names and addresses of the members of the board of directors of the district, not less than five nor more than twenty-one, who shall serve or continue to serve until their successors are elected and qualified. In any district having within its boundaries twenty-five or more cities and villages, (a) the original petition for creation shall set forth the number of directors of the district and shall provide that the board of directors, to serve until their successors are elected and qualified, shall be appointed by the Governor within

thirty days after the approval of the formation of the district and (b) a petition to amend a charter shall set forth the names and addresses of the members of the board of directors of the district. In the petition the directors named or to be appointed by the Governor shall be divided as nearly as possible into three equal groups, the members of the first group to hold office until their successors, elected at the first statewide general election thereafter, shall have qualified, the members of the second group to hold office until their successors, elected at the second statewide general election thereafter, shall have qualified, and the members of the third group to hold office until their successors, elected at the third statewide general election thereafter, shall have qualified. The group to which each proposed director belongs shall be designated in the petition or, for an original petition in case the district has within its proposed boundaries twenty-five or more cities and villages, shall be set forth in the order of appointment by the Governor.

Source: Laws 1933, c. 86, § 3, p. 339; Laws 1937, c. 152, § 3, p. 579; R.S.Supp.,1941, § 70-703; Laws 1943, c. 145, § 1(2), p. 507; R.S.1943, § 70-604; Laws 1945, c. 157, § 1, p. 516; Laws 1955, c. 267, § 1, p. 839; Laws 1967, c. 418, § 1, p. 1284; Laws 1981, LB 181, § 8; Laws 1986, LB 1230, § 35; Laws 1986, LB 949, § 5; Laws 1997, LB 658, § 6; Laws 2005, LB 139, § 4.

General description of the nature of business is required to be set forth in the petition. *Schroll v. City of Beatrice*, 169 Neb. 162, 98 N.W.2d 790 (1959).

Petition for organization, when approved, becomes charter of district. *Custer Public Power Dist. v. Loup River Public Power Dist.*, 162 Neb. 300, 75 N.W.2d 619 (1956).

70-604.01 Chartered territory; boundaries.

(1) Except as the same may be further limited or expanded by requirements in Chapter 70, article 6, the chartered territory of any district organized pursuant to and existing by virtue of or subject to the provisions of Chapter 70, article 6, shall include the area in this state within which such district renders electric service of the nature defined in section 70-604.02 and termed its operating area. There may be included, within the chartered area of such district, areas which are outside the operating area as defined in section 70-604.02, but as to which inclusion is nevertheless authorized by other sections of Chapter 70, article 6.

(2) Subject to the requirements of section 70-662 and the approval of the Nebraska Power Review Board in accordance with sections 70-663 and 70-664, any district organized pursuant to Chapter 70, article 6, and engaged in the operation of electric generation, transmission, or distribution facilities or any combination thereof may, in the discretion of the board of directors of such district and upon a finding by the board of directors of such district that the inclusion or exclusion thereof would be consistent with the best interests of the district and its customers, either include within or exclude from the chartered area all municipalities which have a population of fewer than one thousand five hundred inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census and which are within a county where such district provides electric service but are not otherwise in such district's operating area.

Source: Laws 1967, c. 418, § 7, p. 1289; Laws 1986, LB 949, § 6; Laws 2009, LB53, § 2; Laws 2017, LB113, § 52.

A public power district which does not provide at least 50 percent of the retail or wholesale power requirements of a municipality cannot include that municipality within its charter area. In re Boundaries of McCook P. P. Dist., 217 Neb. 11, 347 N.W.2d 544 (1984).

70-604.02 Operating area, defined.

The operating area of a district, for purposes of establishing its chartered territory, is the geographical area in this state comprising:

(1) The district’s retail distribution area, which is that area within which the district delivers electricity by distribution lines directly to those of its customers who consume the electricity; and

(2) The district’s wholesale distribution area, which is the aggregate of those retail distribution areas of the public electric utilities which purchase electricity either directly or indirectly from the district for resale to their retail customers if the selling district has the responsibility, in whole or in part, of charging for and delivery of the electricity by transmission lines to the retail public electric utility distribution lines at one or more points of delivery pursuant to a power contract, having an original term of five years or more, to deliver firm power and energy that constitutes fifty percent or more of the purchasing public electric utility’s annual energy requirements. To the extent that a selling district leases its plant or systems to another district to be operated by such other district, or produces electricity, hydrogen, or ethanol which other districts may purchase, and such other districts provide or operate the transmission lines to carry such electricity from the producer to such other districts, the retail and wholesale distribution areas of such other districts are not a part of the operating area of the selling district by reason alone of such leasing or production.

Source: Laws 1967, c. 418, § 8, p. 1289; Laws 1986, LB 949, § 7; Laws 1986, LB 1230, § 36; Laws 2005, LB 139, § 5; Laws 2009, LB53, § 3.

70-604.03 Operating area; boundary lines; establish; precinct division; request by retail customer to vote or hold office; certification procedure.

(1) To establish boundary lines of an operating area coincident with voting precinct or county boundary lines, it shall be permissible to eliminate area from or add area to the operating area so that retail distribution areas are identified by reference to whole voting precincts and wholesale distribution areas are identified by reference to whole counties.

(2) Voting or election precincts may be divided for the purposes of establishing chartered territory and district elections. The description of such divided precincts may be given by section, township, and range and shall be subject to the approval of the Secretary of State.

(3) Any retail customer whose principal residence is being served by a public power district and whose principal residence is not in the chartered territory of such district may request the district in writing at least fifteen days prior to the certification date for such district, as such date is provided in section 70-611, for the right for each registered voter residing at such residence to vote for, and be eligible to hold office as a member of, the board of directors of such district. The secretary of the district shall cause notice to be given to each such retail customer which reasonably prescribes the manner in which the retail customer may request such right to vote. The notice shall be given by first-class mail and may be included as part of the regular billing statement mailed to a customer if

such billing statement is sent by first-class mail to such retail customer and the mail is conspicuously marked as to its importance. Such notice shall be given at least sixty days prior to the time the election certification and publication information is transmitted to the Secretary of State pursuant to section 70-611. The district shall certify to the Secretary of State the names of all such retail customers for whom such request to vote has been made along with identification of the voting or election precincts in which such retail customers reside, and each such retail customer shall be a registered voter and qualified to hold office as a member of the board of directors, if otherwise qualified to vote.

(4) Any district dividing a precinct pursuant to subsection (2) of this section or certifying retail customers pursuant to subsection (3) of this section shall transmit all necessary information relevant to such division or certification along with the election certification and publication provided for in section 70-611. All additional election costs caused by such division or certification shall be due and payable by the district within thirty days after the receipt of a statement from the county.

Source: Laws 1967, c. 418, § 9, p. 1290; Laws 1982, LB 198, § 1; Laws 1985, LB 96, § 1; Laws 1986, LB 949, § 8; Laws 1994, LB 76, § 577.

The right to vote in an election of successors to the board of directors of a public power district is purely statutory. In re Boundaries of McCook P. P. Dist., 217 Neb. 11, 347 N.W.2d 554 (1984).

70-604.04 Operating area; electric utility not included, when; wholesale supplier; duties.

Interconnections of plant or system primarily for the purpose of rendering emergency or temporary electric service to another electric utility, in order to maintain adequate reserve capacity for all the electric utilities involved or to pool spare plant or system capacity, shall not in itself establish an electric utility as part of the operating area of another for purposes of sections 70-604 to 70-619. When a district which purchases electricity for resale actually segregates its distribution system to its customers such that only a portion of its total customers normally receive the electricity transmitted by a given wholesale supplier district, that wholesale supplier district may be required to include in its operating area only that portion of the customers of the supplied district who are so indirectly supplied by electricity from that wholesale supplier district.

Source: Laws 1967, c. 418, § 10, p. 1290; Laws 1994, LB 76, § 578.

70-604.05 District; noncompliance; complaint; hearing; notice; order; failure to comply; penalty.

When it appears that one or more districts are in noncompliance with the provisions of Chapter 70, article 6, the corporate amendments required to comply shall be made generally in accordance with the procedures and requirements contained in Chapter 70, article 6. In the absence of voluntary amendment any time subsequent to six months after the publication of the first federal decennial census published after August 30, 2009, any person residing in the geographical area of alleged noncompliance, or any district or any two or more districts, may file a complaint with the Nebraska Power Review Board against one or more other districts alleging the area of noncompliance of such other districts. Upon receipt of such complaint, the Nebraska Power Review Board

shall issue an order directed to the alleged noncomplying district, granting a hearing and requiring it to show cause why an amended petition for creation eliminating such noncompliance should not be filed for approval. Thirty-three days' notice of hearing, which includes mailing time, shall be given to such alleged noncomplying district by either registered or certified mail. The alleged noncomplying district may appear by answer or by petition for amended petition for creation of the district. The burden of proof of noncompliance shall be upon the complainant and of proposed amendments upon the petitioner. If the Nebraska Power Review Board finds that an amended petition for creation should be made and the alleged noncomplying district has not proposed an acceptable one, the Nebraska Power Review Board shall frame the amendment to be approved after continuing the hearing to receive such evidence as may be offered by the parties having appeared before the Nebraska Power Review Board regarding the contents of the amendment to be framed by the Nebraska Power Review Board.

The members of the board of directors of any noncomplying district, including any district failing to comply with an amended petition as framed by the Nebraska Power Review Board, shall each be liable for a civil penalty of fifty dollars for each day of noncompliance which continues after thirty days following final adjudication of noncompliance. Such penalty shall be recovered in an action brought by the Attorney General in the district court for Lancaster County. Service of summons in such action may be had anywhere in the state. Any penalty collected pursuant to this section shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska. No member of any such board shall receive any compensation or reimbursement of expenses during the period for which he or she is liable for such penalty, nor shall he or she be eligible as a candidate for reelection.

Source: Laws 1967, c. 418, § 11, p. 1291; Laws 1969, c. 546, § 1, p. 2200; Laws 1981, LB 181, § 9; Laws 1986, LB 949, § 9; Laws 2009, LB53, § 4.

70-604.06 Nebraska Power Review Board; final action; appeal; manner.

An appeal of any final action of the Nebraska Power Review Board may be taken to the Court of Appeals. Such appeal shall be in accordance with the rules provided by law for appeals in civil cases.

Source: Laws 1967, c. 418, § 12, p. 1291; Laws 1981, LB 181, § 10; Laws 1991, LB 732, § 122; Laws 2003, LB 187, § 12.

70-604.07 Repealed. Laws 1986, LB 949, § 17.

70-604.08 District; reorganization, consolidation, or merger; directors; continue to serve term.

In the event of a reorganization, consolidation, or merger of any district or districts, directors of the districts involved and who are in office at the time of such reorganization, consolidation, or merger may continue to serve as directors of the resulting reorganized, consolidated, or merged district until the expiration of the term of office for which such person or persons have been elected and until his or their successors are elected and qualified.

Source: Laws 1967, c. 418, § 14, p. 1292; Laws 1994, LB 76, § 579.

70-604.09 District; conduct business in other states; limitations.

A public power district may exercise its powers and engage in business either in the State of Nebraska or in any other state subject to any limitations in the petition for its creation and to the laws of such other state. In order to exercise its powers or engage in business in another state, a public power district shall have power and be authorized to comply with the laws of that state.

Source: Laws 1971, LB 276, § 1.

70-605 District; original creation; petition; signatures; number required.

The petition for the original creation of a district shall be signed by fifteen percent of the registered voters of the municipality or municipalities as defined in subsection (2) of section 70-601 the combined territory of which composes the territory of the proposed district. If the municipality is a county or voting precinct, the whole number of votes cast for Governor at the statewide general election next preceding the filing of the petition shall be the basis on which the required number of signatures on the petition shall be determined. If the municipality is a city or incorporated village, the number of signatures required on the petition shall be based on the total number of votes cast at its general municipal election next preceding the filing of the petition. Signers and circulators of a petition under this section shall comply with sections 32-629 and 32-630.

Source: Laws 1933, c. 86, § 3, p. 339; Laws 1937, c. 152, § 3, p. 579; C.S.Supp.,1941, § 70-703; Laws 1943, c. 145, § 1(3), p. 508; R.S.1943, § 70-605; Laws 1986, LB 949, § 10; Laws 1994, LB 76, § 580.

70-606 District; petition requirements.

The petition for the original creation of a district shall conform to the requirements of section 32-628.

Source: Laws 1933, c. 86, § 3, p. 339; Laws 1937, c. 152, § 3, p. 579; C.S.Supp.,1941, § 70-703; Laws 1943, c. 145, § 1(4), p. 508; R.S.1943, § 70-606; Laws 1994, LB 76, § 581.

70-607 District; petition; investigation; approval.

Upon receipt of such petition it shall be the duty of the Nebraska Power Review Board at once to make an investigation of the proposed district and of its proposed plants, systems, or irrigation works, and, if deemed by the Nebraska Power Review Board feasible and conforming to public convenience and welfare, the Nebraska Power Review Board, or its successor, by its executive head, shall thereupon and within thirty days from the receipt of such petition, execute a certificate in duplicate, setting forth a true copy of the petition and declaring that the petition has been approved.

Source: Laws 1933, c. 86, § 3, p. 339; Laws 1937, c. 152, § 3, p. 579; C.S.Supp.,1941, § 70-703; Laws 1943, c. 145, § 1(5), p. 509; R.S.1943, § 70-607; Laws 1967, c. 419, § 1, p. 1293; Laws 1981, LB 181, § 11.

Petition, when approved, becomes the charter of the district. Schroll v. City of Beatrice, 169 Neb. 162, 98 N.W.2d 790 (1959).

Provision in this section that a certificate of approval of petition for incorporation shall be issued within thirty days from filing of the petition is directory as distinguished from mandato-

ry where the statute itself imposes duties of a judicial nature requiring a longer time. State ex rel. Wright v. Eastern Nebraska Public Power District, 130 Neb. 683, 266 N.W. 594 (1936);

State ex rel. Wright v. Lancaster County Rural Public Power District, 130 Neb. 677, 266 N.W. 591 (1936).

70-608 District; certificate of approval; filing.

The Nebraska Power Review Board shall immediately cause one of the certificates to be forwarded to and filed in the office of the Secretary of State and the other one in the office of the county clerk of the county in which the principal place of business of the district is located. Thereupon such district under its designated name shall be and constitute a body politic and corporate.

Source: Laws 1933, c. 86, § 3, p. 339; Laws 1937, c. 152, § 3, p. 579; C.S.Supp.,1941, § 70-703; Laws 1943, c. 145, § 1(6), p. 509; R.S.1943, § 70-608; Laws 1981, LB 181, § 12.

70-609 District; board of directors; assumption of duties.

Immediately upon the filing of the certificate in the office of the Secretary of State and in the office of the county clerk, the members of the board of directors named in the petition, or appointed by the Governor in case the district has within its boundaries twenty-five or more cities and villages, shall qualify as provided for in section 70-616 and immediately assume the duties of their office. Failure or refusal to qualify shall be deemed to create a vacancy, which shall be filled as provided in section 70-615. The first meeting of the board of directors shall be called by the director first named in the petition who qualifies.

Source: Laws 1933, c. 86, § 3, p. 339; Laws 1937, c. 152, § 3, p. 579; C.S.Supp.,1941, § 70-703; Laws 1943, c. 145, § 1(7), p. 510; R.S.1943, § 70-609; Laws 1945, c. 157, § 2, p. 517; Laws 2000, LB 901, § 3.

70-609.01 Board of directors; statement of public policy.

Because of the importance of electrical energy to the present and future development of the state, the effect of the operations of public power districts on both its citizens and economy, and the significant impact of the action or inaction of a public power district not only on its direct and indirect residential ratepayers but also on the population and economy of areas in proximity to the immediate area served, it is hereby declared to be the public policy of this state to provide for and encourage a broad base representation of the citizens of this state on the boards of directors of public power districts.

Source: Laws 1986, LB 949, § 1.

70-610 Board of directors; candidate qualifications; election; expenses.

(1) After the selection of the original board of directors of a district as provided for in sections 70-604 and 70-609, successors shall be nominated and elected as provided in section 32-512. Elections shall be conducted as provided in the Election Act.

(2) A candidate for director shall be a registered voter residing within the chartered territory or subdivision as defined in the charter of the district or a retail customer duly certified in accordance with subsection (3) of section 70-604.03.

(3) Each public power district shall pay for the election expenses of nominating and electing its directors as provided in this section. Except as otherwise provided in this section, the district shall pay to each county in which the name of one or more candidates appears upon the ballot as follows: Counties having a population of less than three thousand inhabitants, one hundred dollars; counties having a population of at least three thousand but less than nine thousand inhabitants, one hundred fifty dollars; counties having a population of at least nine thousand but less than fourteen thousand inhabitants, two hundred dollars; counties having a population of at least fourteen thousand but less than twenty thousand inhabitants, two hundred fifty dollars; counties having a population of at least twenty thousand but less than sixty thousand inhabitants, three hundred dollars; counties having a population of at least sixty thousand but less than one hundred thousand inhabitants, fifteen hundred dollars; counties having a population of at least one hundred thousand but less than two hundred thousand inhabitants, three thousand dollars; and counties having a population of two hundred thousand inhabitants or more, fifty-five hundred dollars. The population of a county for purposes of this section shall be the population as determined by the most recent federal decennial census.

When the name of one or more candidates of a district appears on ballots in less than one-half of the precincts in a county, the cost to the district shall be reduced fifty percent. Election expenses shall be due and payable by each public power district within thirty days after receipt of a statement from the county.

(4) In lieu of the payment of election expenses pursuant to subsection (3) of this section, a district shall pay for the election expenses of nominating and electing its board of directors pursuant to subsection (2) of section 32-1203 upon request of a county. The election expenses shall be due and payable by the district within thirty days after receipt from the county of an itemized statement of election expenses owed by the district. This subsection shall not be construed to authorize reimbursement for expenses not directly attributable to nominating and electing members of the board of directors.

Source: Laws 1933, c. 86, § 4, p. 344; Laws 1937, c. 152, § 4, p. 581; Laws 1941, c. 137, § 1, p. 542; C.S.Supp., 1941, § 70-704; Laws 1943, c. 145, § 2(1), (11), pp. 510, 515; Laws 1943, c. 146, § 1, p. 516; R.S. 1943, § 70-610; Laws 1949, c. 198, § 1, p. 587; Laws 1957, c. 124, § 21, p. 431; Laws 1959, c. 135, § 29, p. 525; Laws 1963, c. 395, § 1, p. 1253; Laws 1967, c. 418, § 2, p. 1286; Laws 1969, c. 547, § 1, p. 2202; Laws 1972, LB 661, § 79; Laws 1972, LB 1401, § 1; Laws 1973, LB 364, § 1; Laws 1975, LB 453, § 57; Laws 1981, LB 181, § 13; Laws 1982, LB 198, § 2; Laws 1986, LB 949, § 11; Laws 1993, LB 90, § 1; Laws 1994, LB 76, § 582; Laws 2008, LB1067, § 2.

Cross References

Election Act, see section 32-101.

Eligibility, additional requirements, see section 70-619.

70-611 Board of directors; election; certified notice; publication.

(1) Not later than January 5 in each even-numbered year, the secretary of the district in districts grossing forty million dollars or more annually shall certify to the Secretary of State on forms prescribed by the Secretary of State the

names of the counties in which all registered voters are eligible to vote for public power district candidates and for other counties the names of the election precincts within each county excluding the municipalities in which voters are not eligible to vote on public power district candidates. The secretary shall also certify the number of directors to be elected and the length of terms for which each is to be elected.

(2) Districts grossing less than forty million dollars annually shall prepare the same type of certification as districts grossing over forty million dollars annually and file such certification with the Secretary of State not later than July 1 of each even-numbered year.

(3) The secretary of each district shall, at the time of filing the certification, cause to be published once in a newspaper or newspapers of general circulation within the district a list of the incumbent directors and naming the counties or election precincts excluding those municipalities in which voters are not eligible to vote for public power district candidates in the same general form as the certification filed with the Secretary of State. A certified copy of the published notice shall be filed with the Secretary of State within ten days after such publication.

Source: Laws 1933, c. 86, § 4, p. 344; Laws 1937, c. 152, § 4, p. 581; Laws 1941, c. 137, § 1, p. 542; C.S.Supp., 1941, § 70-704; Laws 1943, c. 145, § 1(2), p. 511; Laws 1943, c. 146, § 1, p. 516; R.S. 1943, § 70-611; Laws 1959, c. 135, § 30, p. 526; Laws 1972, LB 1401, § 2; Laws 1973, LB 364, § 2; Laws 1975, LB 453, § 58; Laws 1994, LB 76, § 583; Laws 1997, LB 764, § 110.

70-612 Board of directors; election; subdivisions; procedure.

(1)(a) Subject to the provisions of Chapter 70, article 6, and subject to the approval of the Nebraska Power Review Board, the board of directors of a district, other than a district with a service area containing a city of the metropolitan class, may amend the petition for its creation to provide for the division of the territory of such district into two or more subdivisions for the nomination and election of some or all of the directors. Each subdivision shall be composed of one or more voting precincts, or divided voting precincts, and the total population of each such subdivision shall be approximately the same. Except in districts which contain a city of the metropolitan class, two or more subdivisions may be combined for election purposes, and members of the board of directors to be elected from such combined subdivisions may be nominated and elected at large when not less than seventy-five percent of the population of the combined subdivisions is within the corporate limits of any city.

(b) In the event a district formed includes all or part of two or more counties and is (i) engaged in furnishing electric light and power and more than fifty percent of its customers are rural customers or (ii) engaged in furnishing electric light and power and in the business of owning and operating irrigation works, then and in that event such subdivisions may be formed by following precinct or county boundary lines without regard to population if in the judgment of the Nebraska Power Review Board the interests of the rural users of electricity or of users of irrigation water service in such district will not be prejudiced thereby.

(2)(a) The board of directors of a district with a service area containing a city of the metropolitan class may amend its charter to provide for the division of

the territory of the district into election subdivisions composed of substantially equal population and compact and contiguous territory and number the subdivisions consecutively and submit the maps to the Nebraska Power Review Board.

(b) If the board of directors provides for eight election subdivisions prior to January 1, 2014, the board of directors shall assign each position on the board of directors to represent a numbered election subdivision for the remainder of the term of office for which the member is elected, regardless of whether the member resides in the subdivision, and shall make such assignments so that the terms of members representing election subdivisions numbered one, two, and three expire in January 2015, the terms of members representing election subdivisions numbered four and five expire in January 2017, and the terms of members representing election subdivisions six, seven, and eight expire in January 2019. If possible, each member shall be assigned to represent an election subdivision that corresponds to the end of the term he or she is serving.

(c) A successor who resides in the numbered election subdivision shall be nominated and elected at the statewide primary and general elections held in the calendar year prior to the expiration of the term of the member who represents such numbered election subdivision.

(3) After each federal decennial census, the board of directors of a district with a service area containing a city of the metropolitan class shall create new boundaries for the election subdivisions. In establishing the boundaries of the election subdivisions, the board of directors shall follow county lines wherever practicable, shall provide for the subdivisions to be composed of substantially equal population and compact and contiguous territory, and shall, as nearly as possible, follow the precinct lines created by the election commissioner or county clerk after each federal decennial census.

(4) Any public power district or public power and irrigation district owning and operating irrigation works may, with approval of the Nebraska Power Review Board, add representation on its board of directors from any county which is outside its chartered territory but in which is located some or all of such irrigation works.

Source: Laws 1937, c. 152, § 4, p. 581; Laws 1941, c. 137, § 1, p. 542; C.S.Supp.,1941, § 70-704; Laws 1943, c. 145, § 1(3), p. 511; Laws 1943, c. 146, § 1, p. 516; R.S.1943, § 70-612; Laws 1967, c. 418, § 3, p. 1287; Laws 1981, LB 181, § 14; Laws 1982, LB 198, § 3; Laws 1986, LB 949, § 12; Laws 1992, LB 424, § 18; Laws 1992, LB 573, § 9; Laws 2013, LB646, § 2.

Amendments to the petition for creation of the district are authorized. *Schroll v. City of Beatrice*, 169 Neb. 162, 98 N.W.2d 790 (1959).

70-613 Repealed. Laws 1975, LB 453, § 61.

70-614 Repealed. Laws 1994, LB 76, § 615.

70-614.01 Repealed. Laws 1967, c. 418, § 16.

70-614.02 Repealed. Laws 1967, c. 418, § 16.

70-615 Board of directors; vacancy; how filled.

(1) In addition to the events listed in section 32-560, a vacancy on the board of directors shall exist in the event of the (a) removal from the chartered area of any director, (b) removal from the subdivision from which such director was elected except as otherwise provided in subsection (2) or (3) of section 70-612, (c) elimination or detachment from the chartered area of the territory in which a director or directors reside, or (d) expiration of the term of office of a director and failure to elect a director to fill such office at the preceding general election. After notice and hearing, a vacancy shall also exist in the event of the absence of any director from more than two consecutive regular meetings of the board, unless such absences are excused by a majority of the remaining board members.

(2) In the event of a vacancy from any of such causes, or otherwise, such vacancy or vacancies shall, except in districts having within their chartered area twenty-five or more cities and villages, be filled by the board of directors. In districts having within their chartered area twenty-five or more cities and villages, vacancies shall be filled by the Governor.

(3) If a vacancy occurs during the term of any director prior to the deadline for filing and the unexpired term extends beyond the first Thursday after the first Tuesday in January following the next general election, an appointment shall be until the first Thursday after the first Tuesday in January following the next general election, and candidates may file nomination papers as provided by law for the placing of their names upon the ballot for election to the unexpired term. If a vacancy occurs during the term of any director after the deadline for filing for election, an appointment shall be until the first Thursday after the first Tuesday in January following the next general election for which candidates may file nomination papers as provided by law.

(4) At any time a vacancy is to be filled by election, the secretary of the district shall give notice to the public by publishing the notice of vacancy, length of term, and the deadline for filing, once in a newspaper or newspapers of general circulation within the district.

(5) Any appointment shall be filed with the Secretary of State by certified mail.

Source: Laws 1933, c. 86, § 4, p. 344; Laws 1937, c. 152, § 4, p. 581; Laws 1941, c. 137, § 1, p. 542; C.S.Supp.,1941, § 70-704; Laws 1943, c. 145, § 1(7), p. 514; Laws 1943, c. 146, § 1, p. 516; R.S.1943, § 70-615; Laws 1945, c. 157, § 3, p. 518; Laws 1953, c. 106, § 31, p. 338; Laws 1957, c. 124, § 23, p. 436; Laws 1967, c. 418, § 5, p. 1268; Laws 1973, LB 364, § 3; Laws 1975, LB 453, § 59; Laws 1985, LB 569, § 2; Laws 1994, LB 76, § 584; Laws 2013, LB646, § 3.

70-616 Board of directors; oath.

Before entering upon the duties of his office, every member elected to membership on the board of directors shall take and subscribe to an oath to support the Constitution of the United States and the Constitution of the State of Nebraska, and faithfully and impartially to perform the duties of his office, which oath shall be filed in the office of the Secretary of State.

Source: Laws 1933, c. 86, § 4, p. 344; Laws 1937, c. 152, § 4, p. 581; Laws 1941, c. 137, § 1, p. 542; C.S.Supp.,1941, § 70-704; Laws 1943, c. 145, § 1(8), p. 515; Laws 1943, c. 146, § 1, p. 516; R.S.1943, § 70-616.

70-617 Repealed. Laws 2000, LB 901, § 10.

70-618 Repealed. Laws 1984, LB 975, § 14.

70-619 Board of directors; qualifications; eligibility to serve.

(1) The corporate powers of the district shall be vested in and exercised by the board of directors of the district. No person shall be qualified to hold office as a member of the board of directors unless (a) he or she is a registered voter (i) of such chartered territory, (ii) of the subdivision from which a director is to be elected if such chartered territory is subdivided for election purposes as provided in subsection (1), (2), or (3) of section 70-612, or (iii) of one of the combined subdivisions from which directors are to be elected at large as provided in section 70-612 or (b) he or she is a retail customer duly certified in accordance with subsection (3) of section 70-604.03.

(2)(a) No person who is a full-time or part-time employee of the district shall be eligible to serve as a member of the board of directors of that district and no high-level manager employed by a district may serve as a member of the board of directors of any district unless such person (i) resigns or (ii) assumes an unpaid leave of absence for the term as a member. The employing district shall grant such leave of absence when requested by any employee for the purpose of the employee serving as a member of such board. A member of a governing body of any one of the municipalities within the areas of the district may not serve on the original board of directors under sections 70-603 to 70-609.

(b) For purposes of this subsection, high-level manager means a person employed by a district who serves in a high-level managerial position, including chief executive officer, president, vice president, chief financial officer, chief operations officer, general manager, or assistant general manager.

Source: Laws 1933, c. 86, § 5, p. 345; C.S.Supp.,1941, § 70-705; Laws 1943, c. 146, § 2(1), p. 518; R.S.1943, § 70-619; Laws 1944, Spec. Sess., c. 5, § 1(1), p. 106; Laws 1957, c. 127, § 2, p. 440; Laws 1963, c. 396, § 1, p. 1258; Laws 1967, c. 418, § 6, p. 1288; Laws 1973, LB 364, § 4; Laws 1982, LB 198, § 4; Laws 1983, LB 15, § 1; Laws 1985, LB 2, § 5; Laws 1986, LB 949, § 13; Laws 1991, LB 3, § 1; Laws 1994, LB 76, § 585; Laws 2013, LB646, § 4; Laws 2015, LB177, § 1.

Cross References

Eligibility, additional requirements, see section 70-610.

District was not estopped to attack constitutionality of a distinct, separate legislative act. *May v. City of Kearney*, 145 Neb. 475, 17 N.W.2d 448 (1945).

70-620 Officers; appointment; treasurer's bond.

(1) In districts receiving annual gross revenue of less than forty million dollars, the board of directors shall appoint the officers of the district, who shall be a president, a vice president, a secretary, and a treasurer, and the board shall appoint such executive committee and other officers, including a general manager, agents, servants, and employees, as deemed necessary in handling the affairs and transacting the business of the district. The president and vice president shall be appointed from the membership of the board of directors. The treasurer may be appointed from the membership of the board of directors

and shall furnish and maintain a corporate surety bond in an amount sufficient to cover all money coming into his or her possession or control. The bond shall be satisfactory in form and with sureties approved by the board. The bond required under this subsection shall in no event exceed one hundred thousand dollars. The bond as thus approved shall be filed with the Secretary of State.

(2) In those districts receiving annual gross revenue of forty million dollars or more, the board of directors shall appoint the officers of the district, who shall be a president or chairperson of the board, a vice president or vice-chairperson of the board, a secretary, and a treasurer, and the board shall appoint such executive committee and other officers, including a president or general manager, agents, servants, and employees, as deemed necessary in handling the affairs and transacting the business of the district. The president or chairperson of the board and vice president or vice-chairperson of the board shall be appointed from the membership of the board of directors. The treasurer may be appointed from the membership of the board of directors and shall furnish and maintain a corporate surety bond in an amount sufficient to cover all money coming into his or her possession or control. The bond shall be satisfactory in form and with sureties approved by the board. The bond required under this subsection shall in no event exceed one hundred thousand dollars. The bond as thus approved shall be filed with the Secretary of State.

Source: Laws 1933, c. 86, § 5, p. 345; C.S.Supp.,1941, § 70-705; Laws 1943, c. 146, § 2(1), p. 519; R.S.1943, § 70-620; Laws 1944, Spec. Sess., c. 5, § 1(2), p. 106; Laws 1951, c. 222, § 1, p. 793; Laws 1981, LB 34, § 1; Laws 1984, LB 49, § 1; Laws 1990, LB 1013, § 1.

70-620.01 Chief executive officer; terms of employment; powers; duties.

In districts receiving annual gross revenue of less than forty million dollars, a general manager may be employed on such terms as the board deems advisable. He or she shall be chief executive officer of the district and, subject to the control of the board of directors, shall manage, conduct, and administer the affairs of the district in an efficient and economical manner.

In those districts receiving annual gross revenue of forty million dollars or more, a chief executive officer, who shall be designated as general manager if the board appoints a president of the board or as president if the board appoints a chairperson of the board, may be employed on such terms as the board deems advisable and, subject to the control of the board of directors, shall manage, conduct, and administer the affairs of the district in an efficient and economical manner.

Source: Laws 1943, c. 146, § 2(1), p. 519; R.S.1943, § 70-620.01; Laws 1944, Spec. Sess., c. 5, § 1(3), p. 106; Laws 1984, LB 49, § 2.

70-621 Board of directors; rules and regulations.

The board of directors may adopt rules and regulations, or bylaws not inconsistent with the provisions of Chapter 70, article 6, for the conduct of the business and affairs of the district.

Source: Laws 1933, c. 86, § 5, p. 345; C.S.Supp.,1941, § 70-705; Laws 1943, c. 146, § 2(1), p. 519; R.S.1943, § 70-621; Laws 1944, Spec. Sess., c. 5, § 1(4), p. 106; Laws 1981, LB 181, § 15.

70-622 Books and records; where kept; open to inspection.

The board of directors shall cause to be kept accurate minutes of their meetings and accurate records and books of account, conforming to approved methods of bookkeeping, clearly setting out and reflecting the entire operation, management and business of the district. Said books and records shall be kept at the principal place of business of the district or at such other regularly maintained place or places of business of the district as shall be designated by the board of directors, with due regard to the convenience of the district and its customers in the several localities or divisions served or from which the information is thus gathered or obtained. Said books and records shall at reasonable business hours be open to public inspection.

Source: Laws 1933, c. 86, § 5, p. 345; C.S.Supp.,1941, § 70-705; Laws 1943, c. 146, § 2(1), p. 520; R.S.1943, § 70-622; Laws 1944, Spec. Sess., c. 5, § 1(5), p. 106.

Books of power district were open to public inspection. *Inslee v. City of Bridgeport*, 153 Neb. 559, 45 N.W.2d 590 (1951).

70-623 Fiscal year; annual audit; filing.

The fiscal year of the district shall coincide with the calendar year, except that a district with only one wholesale customer that is a city or a village may use the same fiscal year as the city or village. The board of directors, at the close of each year's business, shall cause an audit of the books, records, and financial affairs of the district to be made by a certified public accountant or firm of such accountants, who shall be selected by the district. The audit shall be conducted in the manner prescribed in section 84-304.01. When the audit has been completed, written copies of the audit shall be placed and kept on file at the principal place of business of the district and shall be filed with the Auditor of Public Accounts and the Nebraska Power Review Board within one hundred eighty days after the last day of the district's fiscal year.

Source: Laws 1933, c. 86, § 5, p. 345; C.S.Supp.,1941, § 70-705; Laws 1943, c. 146, § 2(1), p. 519; R.S.1943, § 70-623; Laws 1944, Spec. Sess., c. 5, § 1(6), p. 107; Laws 1967, c. 420, § 1, p. 1294; Laws 1981, LB 302, § 6; Laws 1993, LB 310, § 8; Laws 2004, LB 969, § 13; Laws 2014, LB798, § 1.

70-623.01 Repealed. Laws 1981, LB 181, § 66.**70-623.02 Audit; records accessible to auditor.**

The audit required by section 70-623 shall be made at the close of the fiscal year. The person making the audit shall have access to all books, records, vouchers, papers, contracts, or other data containing information on the subject (1) in the office of the public power or public power and irrigation district, (2) in the office of the chief executive officer of the district provided for in section 70-620.01, or (3) in the possession or under the control of any of the officers, agents, or servants of the district. All officers, agents, and servants of the public power or public power and irrigation district shall furnish to the person making the audit and his or her agents, servants, and employees such information regarding the auditing of the public power or public power and irrigation districts as may be demanded.

Source: Laws 1943, c. 146, § 2(3), p. 521; R.S.1943, § 70-623.02; Laws 1944, Spec. Sess., c. 5, § 1(11), p. 109; Laws 1991, LB 3, § 2; Laws 1993, LB 310, § 9.

70-623.03 Failure to file audit; effect.

If any public power district fails to file a copy of an audit within the time prescribed in section 70-623, then its books, records, and financial affairs shall, within one hundred eighty days after the close of the fiscal year of the district, be audited by a certified public accountant or firm of accountants selected by the Auditor of Public Accounts. The cost of the audit shall be paid by the district. A copy of such audit shall be placed and kept on file at the principal place of business of the district.

Source: Laws 1945, c. 160, § 1, p. 523; Laws 1993, LB 310, § 10.

70-624 Officers; compensation; approval; publication; violation; penalty.

(1) In no event shall the compensation, as a salary or otherwise, of any general manager or president, assistant general manager or vice president, or other officer be approved except by the vote of approval of two-thirds or more of the members of the board of directors. The record of such vote of approval, together with the names of the directors so voting, shall be made a part of the permanent records of the board.

(2) The current salaries of any general manager or president or assistant general manager or vice president and all officers of the district shall be published once each year in three legal newspapers of general circulation in the district in which such general manager or president, assistant general manager or vice president, or officers are employed. The chief executive officer as described in section 70-620.01 shall be responsible for publishing the current salaries as required by this subsection. Any chief executive officer who violates this subsection shall be guilty of a Class V misdemeanor.

Source: Laws 1933, c. 86, § 5, p. 345; C.S.Supp., 1941, § 70-705; Laws 1943, c. 146, § 2(1), p. 520; R.S. 1943, § 70-624; Laws 1944, Spec. Sess., c. 5, § 1(7), (8), (9), pp. 107, 108; Laws 1949, c. 199, § 1(1), p. 579; Laws 1971, LB 243, § 1; Laws 1982, LB 739, § 1; Laws 1984, LB 49, § 3; Laws 1994, LB 915, § 1.

70-624.01 District; agent; cost-plus contracts prohibited.

No district shall hereafter pay or agree to pay any agent a fee or other compensation, for services rendered or to be rendered in connection with the acquisition of any property by any such district, which fee or compensation increases with the amount of the purchase price of the property acquired. Every contract in which such district agrees to pay compensation to any agent upon any such basis is hereby declared to be against public policy, illegal, and void; *Provided*, as to any such contract heretofore made that is legally binding upon any such district, sections 70-619 to 70-624.02 shall not prevent payment of fees or compensation according to the terms thereof. Any officer or director of any such district, who shall authorize, approve, or sanction any such payment or agreement, contrary to the provisions of sections 70-619 to 70-624.02, shall be subject to removal from office therefor in the manner provided by law for removal of county officers and shall be personally liable to the district for the amount paid. The term agent, as used in this section, shall be deemed to include any person, firm, or corporation that seeks to receive payment out of the funds of the district or the proceeds of sale of securities

issued by it for acting on its behalf in conducting any transaction relating to the acquisition of property or financing of its indebtedness.

Source: Laws 1933, c. 86, § 5, p. 345; C.S.Supp.,1941, § 70-705; Laws 1943, c. 146, § 2(1), p. 520; R.S.1943, § 70-624; Laws 1944, Spec. Sess., c. 5, § 1(7), (8), (9), pp. 107, 108; Laws 1949, c. 199, § 1(2), p. 579.

70-624.02 Board of directors; expenses; compensation; prohibitions; exceptions.

The members of the board of directors shall be paid their actual expenses, while engaged in the business of the district under the authority of the board of directors, and, for their services, such compensation as shall be fixed by the board of directors.

The boards of directors of those districts with gross revenue of less than forty million dollars may fix compensation at not to exceed six thousand seven hundred twenty dollars per year as to all members except the president and not exceeding seven thousand five hundred sixty dollars a year as to the president.

The boards of directors of those districts with gross revenue of forty million dollars or more may fix compensation at not to exceed thirteen thousand four hundred forty dollars per year as to all members except the president or chairperson of the board and not exceeding fifteen thousand one hundred twenty dollars per year as to the president or chairperson of the board. All salaries and compensation shall be obligations against and be paid solely from the revenue of the district. No director shall receive any other compensation from the district, except as provided in this section, during the term for which he or she was elected or appointed or in the year following the expiration of his or her term, and resignation from such board of directors shall not be construed as the termination of the term of office for which he or she was elected or appointed. A member of the board of directors of a public power district organized under the laws of this state shall not be limited to service on the board of directors in the district in which he or she has been elected so as to preclude service in similar positions of trust on a state, regional, or national level which are the result of his or her membership as a director on such board. For time expended in his or her duties in such position of trust, the director shall not be limited to any existing provisions of law of this state relating to payment of per diem for services as a member of such board of directors, but shall be entitled to receive such additional compensation as may be provided for such service, regardless of the fact that such compensation may be paid from funds to which his or her district has made contributions in the form of dues or otherwise.

Source: Laws 1933, c. 86, § 5, p. 345; C.S.Supp.,1941, § 70-705; Laws 1943, c. 146, § 2(1), p. 520; R.S.1943, § 70-624; Laws 1944, Spec. Sess., c. 5, § 1(7), (8), (9), pp. 107, 108; Laws 1949, c. 199, § 1(3), p. 580; Laws 1965, c. 405, § 1, p. 1304; Laws 1965, c. 406, § 1, p. 1306; Laws 1969, c. 548, § 1, p. 2204; Laws 1971, LB 308, § 1; Laws 1975, LB 226, § 1; Laws 1978, LB 837, § 1; Laws 1984, LB 49, § 4; Laws 1985, LB 75, § 1; Laws 1990, LB 730, § 2; Laws 1993, LB 6, § 1; Laws 2000, LB 901, § 4.

70-624.03 Board of directors; plan of insurance for benefit of employees and dependents; may establish.

The board of directors may establish a plan of insurance, designed and intended for the benefit of the employees of the district and the dependents of employees of the district, and, in the discretion of the board, expend funds of the district for the payment of premiums for such employees' and dependents' group, franchise, or wholesale insurance policies. Members of the board of directors of the district may be considered employees for purposes of this section. The dollar amount of any health insurance premiums paid from the funds of the district for the benefit of a member of the board of directors may be in addition to the amount of compensation authorized to be paid to such director pursuant to section 70-624.02.

Source: Laws 1949, c. 199, § 1(4), p. 580; Laws 1972, LB 1186, § 1; Laws 1993, LB 182, § 1; Laws 2000, LB 901, § 5.

70-624.04 Directors and employees; hold other elective office; contract not void or voidable; when.

Directors and employees of public power districts, public power and irrigation districts, and public utility companies shall be permitted to hold other elective office as provided in section 32-604. No contracts of any such public power district, public power and irrigation district, or public utility company shall be void or voidable by reason of such service by its directors or employees.

Source: Laws 1971, LB 494, § 1; Laws 1973, LB 559, § 9; Laws 1990, LB 931, § 7; Laws 1991, LB 20, § 3; Laws 1991, LB 12, § 6; Laws 1994, LB 76, § 586.

A company engaged in the transmission and distribution of natural gas to the public on a regular basis is a public utility company within the meaning of this section. Kansas-Nebraska

Nat. Gas Co., Inc. v. Wiles, 190 Neb. 795, 212 N.W.2d 633 (1973).

70-625 Public power district; powers; restrictions.

(1) Subject to the limitations of the petition for its creation and all amendments to such petition, a public power district has all the usual powers of a corporation for public purposes and may purchase, hold, sell, and lease personal property and real property reasonably necessary for the conduct of its business. No district may sell household appliances at retail if the retail price of any such appliance exceeds fifty dollars, except that newly developed electrical appliances may be merchandised and sold during the period of time in which any such appliances are being introduced to the public. New models of existing appliances shall not be deemed to be newly developed appliances. An electrical appliance shall be considered to be in such introductory period of time until the particular type of appliance is used by twenty-five percent of all the electrical customers served by such district, but such period shall in no event exceed five years from the date of introduction by the manufacturer of the new appliance to the local market.

(2) In addition to its powers authorized by Chapter 70 and specified in its petition for creation, as amended, a public power district may sell, lease, and service satellite television signal descrambling or decoding devices, satellite television programming, and equipment and services associated with such devices and programming, except that this section does not authorize public power districts (a) to provide signal descrambling or decoding devices or

satellite programming to any location (i) being furnished such devices or programming on April 24, 1987, or (ii) where community antenna television service is available from any person, firm, or corporation holding a franchise pursuant to sections 18-2201 to 18-2206 or a permit pursuant to sections 23-383 to 23-388 on April 24, 1987, or (b) to sell, service, or lease C-band satellite dish systems or repair parts.

(3) In addition to the powers authorized by Chapter 70 and specified in its petition for creation as amended, the board of directors of a public power district may apply for and use funds available from the United States Department of Agriculture or other federal agencies for grants or loans to promote economic development and job creation projects in rural areas as permitted under the rules and regulations of the federal agency from which the funds are received. Any loan to be made by a district shall only be made in participation with a bank pursuant to a contract. The district and the participating bank shall determine the terms and conditions of the contract. In addition, in rural areas of the district, the board of directors of such district may provide technical or management assistance to prospective, new, or expanding businesses, including home-based businesses, provide assistance to a local or regional industrial or economic development corporation or foundation located within or contiguous to the district's service area, and provide youth and adult community leadership training.

(4) In addition to the powers authorized by Chapter 70 and specified in its petition for creation as amended, a public power district may sell or lease its dark fiber pursuant to sections 86-574 to 86-578.

(5) Notwithstanding any law, ordinance, resolution, or regulation of any political subdivision to the contrary, each public power district may receive funds and extend loans pursuant to the Nebraska Investment Finance Authority Act or pursuant to this section. In addition to the powers authorized by Chapter 70 and specified in its petition for creation, as amended, and without the need for further amendment thereto, a public power district may own and operate, contract to operate, or lease energy equipment and provide billing, meter reading, surveys, or evaluations and other administrative services, but not to include natural gas services, of public utility systems within a district's service territory.

Source: Laws 1933, c. 86, § 6, p. 346; Laws 1937, c. 152, § 5, p. 583; C.S.Supp., 1941, § 70-706; Laws 1943, c. 146, § 3(1), p. 521; R.S. 1943, § 70-625; Laws 1961, c. 335, § 1, p. 1045; Laws 1980, LB 954, § 62; Laws 1987, LB 23, § 1; Laws 1987, LB 345, § 1; Laws 1994, LB 915, § 2; Laws 1997, LB 658, § 8; Laws 1997, LB 660, § 1; Laws 2001, LB 827, § 15; Laws 2002, LB 1105, § 477.

Cross References

Nebraska Investment Finance Authority Act, see section 58-201.

It was intended to permit the business of a power district to be operated in a successful and profitable manner. *City of O'Neill v. Consumers P. P. Dist.*, 179 Neb. 773, 140 N.W.2d 644 (1966).

The Legislature gave to a public power district all the usual powers of a corporation organized for a public purpose. *York County Rural P. P. Dist. v. O'Connor*, 172 Neb. 602, 111 N.W.2d 376 (1961).

Powers granted by this section are subject to limitations of petition for creation of district. *Schroll v. City of Beatrice*, 169 Neb. 162, 98 N.W.2d 790 (1959).

Legislature gave to power districts all the usual powers of a corporation organized for public purposes. *United Community Services v. Omaha Nat. Bank*, 162 Neb. 786, 77 N.W.2d 576 (1956).

District can purchase or otherwise acquire, own and sell the full interest in either real or personal property. *Burnett v. Central Neb. P. P. & I. Dist.*, 147 Neb. 458, 23 N.W.2d 661 (1946).

Powers of purchase are conferred, and are not confined to any specific statutory method or manner of their exercise. *State*

ex rel. Johnson v. Consumers Public Power Dist., 143 Neb. 753, 10 N.W.2d 784 (1943).

A public power district which purchases and retains equipment essential to its operation is liable for the reasonable value

of such equipment, if such district was clothed with power to purchase such property, even though the contract is unenforceable because the power was irregularly exercised. Sorensen v. Chimney Rock Public Power Dist., 138 Neb. 350, 293 N.W. 121 (1940).

70-625.01 Rural areas; legislative findings and declarations.

The Legislature finds and declares that:

(1) There are rural areas in the state which are experiencing declines in economic activity and the outmigration of rural residents which is eroding the tax base of those rural areas and undermining the ability of the state and local governments to provide essential public services;

(2) Rural economic development efforts can increase the productivity of economic resources, create and enhance employment opportunities, increase the level of income and quality of life for rural residents, assist in slowing or reversing the outmigration of rural residents, and help maintain essential public services to the advantage not only of those rural areas but also of the state as a whole and the electric utilities serving those rural areas;

(3) Funds may be available from the United States Department of Agriculture or other federal agencies to suppliers of electricity in rural areas to promote economic development and job creation projects;

(4) It is the policy of this state to promote economic development and job creation projects in rural areas through the use of federal funds and other funds which may be available as authorized in subsection (3) of section 70-625;

(5) Public power districts operating in rural areas of this state are uniquely situated through their boards of directors to know and understand the need to promote economic development and job creation projects in their service areas; and

(6) Involvement by publicly owned electric utilities operating in rural areas in such economic development activities serves a public purpose and it is the public policy of this state to allow public power districts to promote economic development and job creation projects in rural areas as provided in subsection (3) of section 70-625.

Source: Laws 1997, LB 658, § 7.

70-625.02 Electric transmission facilities and interconnections, defined; policy of state.

It is declared to be the policy of the State of Nebraska that electric transmission facilities and interconnections which are defined as being electric lines having a rating of thirty-four thousand five hundred volts and higher will be provided and made available to all power agencies so as to result in the lowest possible cost for the transmission and delivery of electric energy over the transmission and interconnected facilities of any public power district, public power and irrigation district, individual municipality, group of municipalities registered with the Nebraska Power Review Board, governmental subdivision, or nonprofit electric cooperative corporation.

Source: Laws 1967, c. 421, § 1, p. 1295; Laws 1969, c. 550, § 1, p. 2206; Laws 1981, LB 181, § 16.

70-626 Electric light and power, hydrogen, and ethanol systems authorized; construction; acquisition; contracts authorized; copy filed with Nebraska Power Review Board.

Subject to the limitations of the petition for its creation and all amendments thereto, a district may own, construct, reconstruct, purchase, lease, or otherwise acquire, improve, extend, manage, use, or operate any electric light and power plants, lines, and systems, any hydrogen production, storage, or distribution systems, or any ethanol production or distribution systems, either within or beyond, or partly within and partly beyond, the boundaries of the district and may engage in or transact business or enter into any kind of contract or arrangement with any person, firm, corporation, state, county, city, village, governmental subdivision, or agency, with the government of the United States, the Rural Electrification Administration or its successor, the Public Works Administration or its successor, or any officer, department, bureau, or agency thereof, with any corporation organized by federal law, including the Reconstruction Finance Corporation or its successor, or with any body politic or corporate for any of the purposes mentioned in this section, for or incident to the exercise of any one or more of the powers described in this section, or for the generation, distribution, transmission, sale, or purchase of electrical energy, hydrogen, or ethanol for lighting, power, heating, and any and every other useful purpose whatsoever, and for any and every service involving, employing, or in any manner pertaining to the use of electrical energy, by whatever means generated or distributed, or for the financing or payment of the cost and expense incident to the acquisition or operation of any such power plant or system, hydrogen production, storage, or distribution system, or ethanol production or distribution system, or incident to any obligation or indebtedness entered into or incurred by the district. In the case of the acquisition by purchase, lease, or any other contractual obligation of an existing electric light and power plant, lines, or system, hydrogen production, storage, or distribution system, or ethanol production or distribution system from any person, firm, association, or private corporation by any such district, a copy of the proposed contract shall be filed with the Nebraska Power Review Board and open to public inspection and examination for a period of thirty days before such proposed contract may be signed, executed, or delivered, and such proposed contract shall not be valid for any purpose and no rights may arise under such contract until after such period of thirty days has expired.

Source: Laws 1933, c. 86, § 6, p. 346; Laws 1937, c. 152, § 5, p. 583; C.S.Supp.,1941, § 70-706; Laws 1943, c. 146, § 3(2), p. 521; R.S.1943, § 70-626; Laws 1945, c. 157, § 4, p. 518; Laws 1981, LB 181, § 17; Laws 1986, LB 1230, § 37; Laws 2005, LB 139, § 6.

Power district has specific power to own or operate electric plants and to enter into contracts or arrangements with any city for sale of electric energy. *City of O'Neill v. Consumers P. P. Dist.*, 179 Neb. 773, 140 N.W.2d 644 (1966).

Powers of a public power district are set forth in this section. *York County Rural P. P. Dist. v. O'Connor*, 172 Neb. 602, 111 N.W.2d 376 (1961).

Powers granted by this section are subject to limitations of petition for creation of district. *Schroll v. City of Beatrice*, 169 Neb. 162, 98 N.W.2d 790 (1959).

Powers conferred are intended to permit district to be operated in a successful and profitable manner. *United Community*

Services v. Omaha Nat. Bank, 162 Neb. 786, 77 N.W.2d 576 (1956).

Legislature contemplated that districts should purchase, lease or otherwise acquire such real and personal property as is reasonably necessary for the conduct of its business. *Burnett v. Central Neb. P. P. & I. Dist.*, 147 Neb. 458, 23 N.W.2d 661 (1946).

District may engage in sale of wiring supplies and equipment. *Sorensen v. Chimney Rock Public Power Dist.*, 138 Neb. 350, 293 N.W. 121 (1940).

Provision in this section granting authority to a power district to enter into contracts for any purposes incident to the exercise of its powers does not provide an exception to former section

39-102 requiring notice to and consent of a majority of the voters interested before a public road can be vacated. Wright v. Loup River Public Power Dist., 133 Neb. 715, 277 N.W. 53 (1938).

70-626.01 Generating power agency; duty to sell electrical energy; when.

A district, individual municipality, or group of municipalities registered with the Nebraska Power Review Board which is engaged in the generation and transmission of electrical energy, all of which are referred to in Chapter 70, article 6, by the term generating power agency, shall be required to sell electrical energy at wholesale under the terms and conditions of a fair and reasonable contract directly to any municipality, registered group of municipalities, district, political subdivision in the state, or any nonprofit electric cooperative corporation organized under Chapter 70, article 7, all of which are referred to in Chapter 70, article 6, by the term distribution power agency, when such distribution power agency makes application for the purchase of electrical energy, if such sale is not in violation of an agreement of the generating power agency approved by the Nebraska Power Review Board and such generating power agency has the requested amount of electrical energy available for sale, and the distribution power agency agrees to make or pay for the necessary physical connection with the electrical facilities of such generating power agency.

Source: Laws 1943, c. 146, § 3(2), p. 522; R.S.1943, § 70-626.01; Laws 1967, c. 421, § 2, p. 1295; Laws 1971, LB 349, § 3; Laws 1981, LB 181, § 18.

Cross References

Wholesale service to municipalities, when required, see section 19-708.

Formerly this section required public power districts to sell electrical energy at wholesale to municipalities. As amended in 1971, the proviso if such sale is not in violation of an agreement of the generating power agency approved by the Nebraska Power Review Board was added. *City of Lincoln v. Nebraska P. Dist.*, 191 Neb. 556, 216 N.W.2d 722 (1974).

Powers granted by this section are subject to limitations of petition for creation of district. *Schroll v. City of Beatrice*, 169 Neb. 162, 98 N.W.2d 790 (1959).

Sale direct to municipalities, and not to association of municipalities, was contemplated. *State ex rel. League of Municipalities v. Loup River Public Power Dist.*, 158 Neb. 160, 62 N.W.2d 682 (1954).

70-626.02 Generating power agency; physical connections; establish; rates.

A generating power agency shall establish a physical connection of its transmission lines and associated facilities with the facilities of a distribution power agency or with the facilities of an intervening power agency when requested by the distribution power agency and shall make available any surplus capacity in its transmission lines and associated facilities and provide for the receipt, transmission, and delivery of power and energy for the account of the distribution power agency upon the payment of rates, tolls, and charges that are reasonable, fair, and nondiscriminatory for the use made of the transmission lines and associated facilities of the generating power agency.

Source: Laws 1967, c. 421, § 3, p. 1296; Laws 1969, c. 550, § 2, p. 2207.

70-626.03 Transmission facilities of other power agency; available for transmission of electric energy; rates.

Surplus capacity in transmission facilities owned by any other power agency shall be made available for transmitting and delivering electric energy to any Nebraska power agency. Electrical energy shall be transmitted and delivered over the transmission facilities by any power agency subject to the terms of

sections 70-625.02 and 70-626.01 to 70-626.04 but only upon payment of rates, tolls, and charges that are reasonable, fair, and nondiscriminatory for the use made of the transmission facilities of the power agency.

Source: Laws 1967, c. 421, § 4, p. 1296; Laws 1969, c. 550, § 3, p. 2207.

70-626.04 Disagreement between power agencies; file complaint with Nebraska Power Review Board; notice; hearing; order advisory provision; effect.

In the event of any disagreement between the generating power agency and a distribution power agency or between any of the power agencies, whether wholesale or retail, regarding the provisions of sections 70-626.01 to 70-626.03 and the use of transmission lines and associated facilities and the establishment of the physical connection therewith, either party to the disagreement may file a written complaint with the Nebraska Power Review Board requesting the board to hear the complaint and issue an order for settlement of the disagreement. Upon the receipt of such a request, the board shall set the matter for hearing within thirty days after the request is made by the complaining party. The board shall provide notice to the other party to the disagreement at least fifteen days prior to the hearing. After the hearing is completed the board shall, within forty-five days, enter an order setting forth its decision on the issues in disagreement and the disposition of the dispute, taking into consideration whether the relief requested by the complaining party is necessary or appropriate in the public interest and will place no undue burden upon the parties affected thereby. Any provision in an order of the board regarding any rate to be charged by a public power district or public power and irrigation district which has agreed with the holders of its outstanding bonds that the district will fix such rates shall be advisory only and shall not be binding on the district.

Source: Laws 1967, c. 421, § 5, p. 1296; Laws 1969, c. 550, § 4, p. 2207.

70-626.05 Wheeling service; contract; dispute; exception; board; settlement.

When a power agency has requested wheeling service under sections 70-626.01 to 70-626.03, the parties shall develop a contract for such wheeling service. Any provisions of the contract which cannot be resolved by the parties shall then be the subject of a dispute filed with the board for settlement. The provisions of this section shall not include the matter of rates to be paid for such wheeling service in the contract.

Source: Laws 1969, c. 550, § 5, p. 2208.

70-627 Irrigation works; construction; acquisition; contracts authorized.

Subject to the limitations of the petition for its creation and all amendments thereto, a public power district may own, construct, reconstruct, improve, purchase, lease, or otherwise acquire, extend, manage, use or operate any irrigation works, as defined in section 70-601, either within or beyond, or partly within and partly beyond, the boundaries of the district, and any and every kind of property, personal or real, necessary, useful or incident to such acquisition, extension, management, use and operation, whether the same be independent of or in connection or conjunction with an electric light and power business, in whole or in part. In connection with the aforesaid powers, such district shall have the right and power to enter into any contract, lease, agreement or arrangement with any state, county, city, village, governmental or public corporation or association, or with any person, firm or corporation, public or

private, or with the government of the United States, the Rural Electrification Administration, the Public Works Administration, or with any officer, department, bureau or agency thereof, or with any corporation organized under federal law, including the Reconstruction Finance Corporation, or any successor thereof, for the purpose of exercising or utilizing any one or more of the above enumerated powers, or for the sale, leasing, or otherwise furnishing or establishing, water rights, water supply, water service or water storage, for irrigation or flood control, or for the financing or payment of the cost and expenses incident to the construction, acquisition or operation of such irrigation works, or incident to any obligation or liability entered into or incurred by such district.

Source: Laws 1933, c. 86, § 6, p. 346; Laws 1937, c. 152, § 5, p. 583; C.S.Supp.,1941, § 70-706; Laws 1943, c. 146, § 3(3), p. 522; R.S.1943, § 70-627.

Powers granted by this section are subject to limitations of petition for creation of district. Schroll v. City of Beatrice, 169 Neb. 162, 98 N.W.2d 790 (1959).

District may acquire fee title to reservoir site. Burnett v. Central Neb. P. P. & I. Dist., 147 Neb. 458, 23 N.W.2d 661 (1946).

70-627.01 Repealed. Laws 1995, LB 120, § 3.

70-627.02 District; radioactive material and energy; powers; development; contracts; financing; indemnification; when.

In addition to all other rights and powers which may be possessed by a public power district or public power and irrigation district under the petition for its creation and all amendments thereto and other statutes, any such district which has radioactive material available to it in association with facilities constructed in connection with the production of electrical energy shall have the power to: (1) Use, sell, lease, transport, dispose of, furnish, or make available, under contract or otherwise, to any person, firm, corporation, state, county, city, village, governmental subdivision or agency, the government of the United States or any officer, department, bureau or agency thereof, any corporation organized by federal law, or any body politic or corporate, any such radioactive material or the energy therefrom; (2) own, operate, construct, reconstruct, purchase, remove, lease, or otherwise acquire, improve, extend, manage, use, or operate such facilities or property, real or personal; or (3) engage in or transact business or enter into any kind of contract or arrangement with anyone for or incident to the exercise of any one or more of the powers of the district for any and every service involving, employing, or in any manner pertaining to the use of radioactive material or the energy therefrom or for the financing or payment of the cost and expense incident to the acquisition, construction, reconstruction, improvement, or operation of such facilities or property, real or personal, or incident to any obligation or indebtedness entered or incurred by any such district.

A public power district or public power and irrigation district may indemnify a public or private entity for such entity's own negligence, notwithstanding section 25-21,187, if the district enters into a contract with the public or private entity for the management or operation of a nuclear power plant that provides for compensation on an at-cost basis. This section does not authorize indemnification for any direct damages from the misconduct of such public or private entity engaged in management or operation of a nuclear power plant. The same limitations of liability and other protections available to a public power district or a public power and irrigation district under the Political Subdivisions Tort

Claims Act shall apply to any public or private entity acting as an agent for a public power district or a public power and irrigation district pursuant to a contract for the management or operation of a nuclear power plant.

Source: Laws 1959, c. 316, § 2, p. 1159; Laws 2003, LB 165, § 12.

Cross References

Political Subdivisions Tort Claims Act, see section 13-901.

70-628 District; additional powers.

In addition to the rights and powers enumerated in Chapter 70, article 6, and in no manner limiting or restricting the same, each district shall be deemed to be and shall have and exercise each and all of the rights and powers of a public electric light and power district or public power district within the meaning of sections 70-501 to 70-503.

Source: Laws 1933, c. 86, § 6, p. 346; Laws 1937, c. 152, § 5, p. 583; C.S.Supp.,1941, § 70-706; Laws 1943, c. 146, § 3(4), p. 523; R.S.1943, § 70-628; Laws 1981, LB 181, § 19.

This section relates to means by which a district may exercise the powers recited in the petition for creation of the district. Schroll v. City of Beatrice, 169 Neb. 162, 98 N.W.2d 790 (1959).

70-628.01 Joint exercise of powers by districts; agreement; terms and conditions; agent; powers and duties; prudent utility practice, defined; liabilities; sale, lease, merger, or consolidation; procedure.

(1) Such district shall have and may exercise any one or more of the powers, rights, privileges, and franchises mentioned in sections 70-625 to 70-628, either alone or jointly with one or more other districts. In any joint exercise of powers, rights, privileges, and franchises with respect to the construction, operation, and maintenance of electric generation or transmission facilities, hydrogen production, storage, or distribution facilities, or ethanol production or distribution facilities, each district shall own an undivided interest in each such facility and be entitled to the share of the output or capacity therefrom attributable to its undivided interest. Each district may enter into an agreement or agreements with respect to any electric generation or transmission facility, hydrogen production, storage, or distribution facility, or ethanol production or distribution facility with the other district or districts, and such agreement shall contain such terms, conditions, and provisions consistent with this section as the board of directors of the district shall deem to be in the interests of the district.

(2) The agreement may include, but not be limited to, (a) provisions for the construction, operation, and maintenance of an electric generation or transmission facility, a hydrogen production, storage, or distribution facility, or an ethanol production or distribution facility by any one of the participating districts, which shall be designated in or pursuant to such agreement as agent, on behalf of itself and the other participating districts or by such other means as may be determined by the participating districts and (b) provisions for a uniform method of determining and allocating among participating districts the costs of construction, operation, maintenance, renewals, replacements, and improvements with respect to such facility. In carrying out its functions and activities as the agent with respect to construction, operation, and maintenance of a facility, such agent shall be governed by the laws and regulations applica-

ble to such agent as a separate legal entity and not by any laws or regulations which may be applicable to any of the other participating districts.

(3) Notwithstanding the provisions of any other law to the contrary, pursuant to the terms of the agreement any participating district or districts may delegate its powers and duties with respect to the construction, operation, and maintenance of a facility to the participating district acting as agent, and all actions taken by such agent in accordance with the provisions of the agreement shall be binding upon each of such participating districts without further action or approval by their respective boards of directors. The district acting as the agent shall be required to exercise all such powers and perform its duties and functions under the agreement in a manner consistent with prudent utility practice. For purposes of this section, prudent utility practice shall mean any of the practices, methods, and acts at a particular time which, in the exercise of reasonable judgment in the light of the facts, including, but not limited to, the practices, methods, and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto, known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety, and expedition. In no event shall anything in this section be deemed to authorize any district to become liable for and to pay for any costs, expenses, or liabilities attributable to the undivided interest of any other district participating in such electric generation or transmission facility. Any district that is interested by ownership, lease, or otherwise in the operation of electric power plants, distribution systems, or transmission lines, hydrogen production, storage, or distribution facilities, or ethanol production or distribution facilities, either alone or in association with another district or districts, may sell, lease, combine, merge, or consolidate all or a part of its property with the property of any other district or districts with the approval of a majority of the board of directors of each district involved in the sale, lease, combination, merger, or consolidation.

Source: Laws 1943, c. 146, § 3(5), p. 523; R.S.1943, § 70-628.01; Laws 1955, c. 267, § 3, p. 844; Laws 1975, LB 62, § 1; Laws 1986, LB 1230, § 38; Laws 1990, LB 907, § 2; Laws 2005, LB 139, § 7.

70-628.02 Joint exercise of powers with municipalities and public agencies; authority.

The Legislature declares that it is in the public interest of the State of Nebraska that public power districts and public power and irrigation districts be empowered to participate jointly or in cooperation with municipalities and other public agencies in the establishment and operation of facilities for the generation or transmission of electric power and energy located within or outside this state, for the production, storage, and distribution of hydrogen located within this state, or for the production and distribution of ethanol located within this state in order to achieve economies and efficiencies in meeting the future energy needs of the people of the State of Nebraska. In furtherance of such need and in addition to but not in substitution for any other powers granted such districts, each such district shall have and may exercise its power and authority to plan, finance, acquire, construct, own, operate, maintain, and improve electric generation or transmission facilities located within or outside this state, hydrogen production, storage, or distribution facilities located within this state, or ethanol production or distribution facilities within this state jointly and in cooperation with one or more other such districts, cities, or

villages of this state which own or operate electrical facilities or municipal corporations or other governmental entities of other states which own or operate electrical facilities. The powers granted under this section may be exercised with respect to any electric generation or transmission facility, hydrogen production, storage, or distribution facility, or ethanol production or distribution facility jointly with the powers granted under any other provision of sections 18-412.07 to 18-412.09 and 70-628.02 to 70-628.04.

Source: Laws 1975, LB 104, § 1; Laws 1986, LB 1230, § 39; Laws 1997, LB 658, § 9; Laws 2005, LB 139, § 8.

70-628.03 Joint exercise of powers with electric cooperatives or corporations; authority.

The Legislature declares that it is in the public interest of the State of Nebraska that public power districts and public power and irrigation districts be empowered to participate jointly or in cooperation with one or more electric cooperatives or electric membership corporations organized under the laws of this state or any other state in the establishment and operation of facilities for the generation or transmission of electric power and energy located within or outside this state, for the production, storage, and distribution of hydrogen located within this state, or for the production and distribution of ethanol located within this state in order to achieve economies and efficiencies in meeting the future energy needs of the people of the State of Nebraska. In furtherance of such end and in addition to but not in substitution for any other powers granted such districts, each such district shall have and may exercise its power and authority to plan, finance, acquire, construct, own, operate, maintain, and improve electric generation or transmission facilities, hydrogen production, storage, or distribution facilities, or ethanol production or distribution facilities located in this state jointly and in cooperation with one or more electric cooperatives or electric membership corporations organized under the laws of this state or any other state, and each district shall have and may exercise such power and authority with respect to electric generation or transmission facilities located outside of this state jointly or in cooperation with one or more electric cooperatives or electric membership corporations organized under the laws of this state or any other state. The power granted under this section may be exercised with respect to any electric generation or transmission facilities, hydrogen production, storage, or distribution facilities, or ethanol production or distribution facilities jointly with the powers granted under any other provision of sections 18-412.07 to 18-412.09 and 70-628.02 to 70-628.04.

Source: Laws 1975, LB 104, § 2; Laws 1986, LB 1230, § 40; Laws 1997, LB 658, § 10; Laws 2005, LB 139, § 9.

70-628.04 Joint exercise of powers; agreement; terms and conditions; agent; powers and duties; liability of district.

Any public power district or public power and irrigation district participating jointly and in cooperation with others in an electric generation or transmission facility, a hydrogen production, storage, or distribution facility, or an ethanol production or distribution facility shall own an undivided interest in such facility and be entitled to the share of the output or capacity from the facility attributable to such undivided interest. Such district may enter into an agree-

ment or agreements with respect to each such electric generation or transmission facility, hydrogen production, storage, or distribution facility, or ethanol production or distribution facility with the other participants, and any such agreement shall contain such terms, conditions, and provisions consistent with the provisions of sections 13-803, 13-805, 13-2504, 13-2505, 70-628.02 to 70-628.04, and 70-1002.03 as the board of directors of such district shall deem to be in the interests of such district. The agreement may include, but not be limited to, provision for the construction, operation, and maintenance of such electric generation or transmission facility, hydrogen production, storage, or distribution facility, or ethanol production or distribution facility by any one of the participants, which shall be designated in or pursuant to such agreement as agent, on behalf of itself and the other participants or by such other means as may be determined by the participants and provision for a uniform method of determining and allocating among participants costs of construction, operation, maintenance, renewals, replacements, and improvements with respect to such facility. In carrying out its functions and activities as such agent with respect to construction, operation, and maintenance of such a facility, including without limitation the letting of contracts therefor, such agent shall be governed by the laws and regulations applicable to such agent as a separate legal entity and not by any laws or regulations which may be applicable to any of the other participants. Notwithstanding the provisions of any other law to the contrary, pursuant to the terms of any such agreement in which or pursuant to which a public power district or a public power and irrigation district or a city or village of this state shall be designated as the agent thereunder for the construction, operation, and maintenance of such a facility, each of the participants may delegate its powers and duties with respect to the construction, operation, and maintenance of such facility to such agent and all actions taken by such agent in accordance with the provisions of such agreement shall be binding upon each of such participants without further action or approval by their respective boards of directors or governing bodies. Such agent shall be required to exercise all such powers and perform its duties and functions under the agreement in a manner consistent with prudent utility practice. For purposes of this section, prudent utility practice means any of the practices, methods, and acts at a particular time which, in the exercise of reasonable judgment in the light of the facts including, but not limited to, the practices, methods, and acts engaged in or approved by a significant portion of the electrical utility industry, hydrogen production industry, or ethanol production industry prior thereto, known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety, and expedition. In no event shall anything in sections 13-803, 13-805, 13-2504, 13-2505, 70-628.02 to 70-628.04, and 70-1002.03 be deemed to authorize any district to become liable for and to pay for any costs, expenses, or liabilities attributable to the undivided interest of any other participant in such electric generation or transmission facility, and no funds of such district may be used for any such purpose.

Source: Laws 1975, LB 104, § 3; Laws 1986, LB 1230, § 41; Laws 1997, LB 658, § 11; Laws 1999, LB 87, § 82; Laws 2005, LB 139, § 10.

70-629 Power to tax denied; exception.

Except for the authority to make assessments granted by section 70-667 to districts organized under or subject to Chapter 70, article 6, the district shall

have no power of taxation, and no governmental authority shall have the power to levy or collect taxes for the purpose of paying, in whole or in part, any indebtedness or obligation of or incurred by the district or upon which the district may be or become in any manner liable.

Source: Laws 1933, c. 86, § 8, p. 350; C.S.Supp.,1941, § 70-708; R.S. 1943, § 70-629; Laws 1971, LB 626, § 1; Laws 1981, LB 181, § 20.

Power of taxation is denied to public power districts. Platte Valley P. P. & I. Dist. v. County of Lincoln, 144 Neb. 584, 14 N.W.2d 202 (1944).

70-630 Water storage or service; contract required; conditions.

No person, irrigation district or irrigation company shall be liable for the payment of any rent or charge for water storage or service unless a contract therefor has been entered into between such person, irrigation district or irrigation company, and the power and irrigation district furnishing such water storage or such water service. No contract for water service shall be made or continued if the rates, tolls, rents, or charges for such service do not provide the person, irrigation district or irrigation company, or the power and irrigation district with the benefits of an overall profitable and successful operation as provided for in section 70-655, and each contract shall contain such a provision; *Provided*, that if such a provision shall be omitted from any contract, the contract shall be subject to the provisions of this section regardless of the price or prices stated in such contract.

Source: Laws 1933, c. 86, § 8, p. 350; C.S.Supp.,1941, § 70-708; R.S. 1943, § 70-630; Laws 1974, LB 822, § 1.

70-631 Power to borrow; repayment of indebtedness; source of funds; security for indebtedness.

Any district organized under or subject to Chapter 70, article 6, shall have the power to borrow money and incur indebtedness for any corporate use or purpose upon such terms and in such manner as such district shall determine. Any and every indebtedness, liability, or obligation of such district for the payment of money, in whatever manner entered into or incurred, and whether arising from contract, implied contract, or otherwise, shall be payable solely (1) from revenue, income, receipts, and profits derived by the district from its operation and management of power plants, systems, irrigation works, hydrogen producing systems, ethanol producing systems, and from the exercise of its rights and powers with respect to utilization of radioactive material or the energy therefrom or (2) from the issuance or sale by the district of its warrants, notes, debentures, bonds, or other evidences of indebtedness, payable solely from such revenue, income, receipts, and profits, or from the proceeds and avails of the sale of property of the district. Any such district may pledge and put up as collateral security for a loan any revenue debentures, notes, warrants, bonds, or other evidences of indebtedness, issued by it. Any district may arrange for, or put up as security for notes or other evidences of indebtedness of such district, the credit of any bank or other financial institution which has been approved by the directors of such district.

Source: Laws 1933, c. 86, § 9, p. 350; Laws 1937, c. 152, § 6, p. 585; C.S.Supp.,1941, § 70-709; R.S.1943, § 70-631; Laws 1944, Spec.

Sess., c. 6, § 1(1), p. 110; Laws 1959, c. 316, § 3, p. 1160; Laws 1967, c. 422, § 1, p. 1297; Laws 1981, LB 181, § 21; Laws 1983, LB 11, § 1; Laws 1986, LB 1230, § 42; Laws 2005, LB 139, § 11.

That the statute restricts funds out of which a district may pay its liabilities to revenues derived from operation does not render unconstitutional the grant of power to condemn property prior to commencement of operations. *Johnson v. Platte Valley Public Power and Irrigation Dist.*, 133 Neb. 97, 274 N.W. 386 (1937).

District is not exempt from payment of charges under Federal Power Act. *Central Neb. P. P. & I. Dist. v. Federal Power Commission*, 160 F.2d 782 (8th Cir. 1947).

70-632 Indebtedness; pledge of revenue, how made.

Any district issuing revenue debentures, notes, warrants, bonds, or other evidences of indebtedness is hereby specifically authorized and empowered to pledge all or any part of the revenue which the district may derive from the sale of electrical energy, hydrogen produced for use in fuel processes, ethanol produced for fuel, storage of water, water for irrigation, radioactive material or the energy therefrom, or other service as security for the payment of the principal and interest thereon. Any such pledge of revenue shall be made by the directors of the district by resolution or by agreement with the purchasers or holders of such revenue debentures, notes, warrants, bonds, or other evidences of indebtedness.

Source: Laws 1933, c. 86, § 9, p. 350; Laws 1937, c. 152, § 6, p. 585; C.S.Supp.,1941, § 70-709; R.S.1943, § 70-632; Laws 1944, Spec. Sess., c. 6, § 1(2), p. 110; Laws 1959, c. 316, § 4, p. 1161; Laws 1986, LB 1230, § 43; Laws 2005, LB 139, § 12.

70-633 Pledge of revenue; terms; directors to prescribe; officer of district; powers authorized.

Any such resolution or agreement may specify the particular revenue that is pledged and the terms and conditions to be performed by the district and the rights of the holders of such revenue debentures, notes, warrants, bonds, or other evidences of indebtedness, and may provide for priorities of liens in any such revenue as between the holders of revenue debentures, notes, warrants, bonds, or other evidences of indebtedness, issued at different times or under different resolutions or agreements. Any resolution authorizing the issuance of notes may provide for a designated officer or officers of the district to sell the notes from time to time at such price or prices and in such amounts as shall be within the limitations set forth in such resolution. Such resolution may also authorize such officer or officers to determine interest rates, maturity dates, and other terms of such notes subject to any limitations which are necessary and appropriate, as determined by the district's board of directors, to effectuate the issuance and purposes of such notes, as set forth in the resolution.

Source: Laws 1933, c. 86, § 9, p. 350; Laws 1937, c. 152, § 6, p. 585; C.S.Supp.,1941, § 70-709; R.S.1943, § 70-633; Laws 1944, Spec. Sess., c. 6, § 1(3), p. 110; Laws 1983, LB 11, § 2.

70-634 Pledge of revenue; provision for refunding indebtedness.

Such resolution or agreement may further provide for the refunding of any such revenue debentures, notes, warrants, bonds or other evidences of indebtedness, through the issuance of other revenue debentures, notes, warrants, bonds or other evidences of indebtedness, entitled to rights and priorities similar in all respects to those held by the revenue debentures, notes, warrants,

bonds or other evidences of indebtedness, that are refunded, and for the issuance of such refunding revenue debentures, notes, warrants, bonds or other evidences of indebtedness, either in exchange for revenue debentures, notes, warrants, bonds or other evidences of indebtedness then outstanding, or the sale thereof and the application of the proceeds of such sale to the retirement of the revenue debentures, notes, warrants, bonds or other evidences of indebtedness, then outstanding.

Source: Laws 1933, c. 86, § 9, p. 350; Laws 1937, c. 152, § 6, p. 585; C.S.Supp.,1941, § 70-709; R.S.1943, § 70-634; Laws 1944, Spec. Sess., c. 6, § 1(4), p. 111.

70-635 Pledge of revenue; special fund.

Any such resolution or agreement may provide that all or any part of the revenue of the district shall be paid into a special fund, and may set forth all the terms and conditions on which such special fund is to be collected, held and disposed of, whether partly or wholly for the benefit of the holders of such revenue debentures, notes, warrants, or other evidences of indebtedness. Provision may be made that such special fund shall be held by depositories designated or described in such resolution or agreement.

Source: Laws 1933, c. 86, § 9, p. 350; Laws 1937, c. 152, § 6, p. 585; C.S.Supp.,1941, § 70-709; R.S.1943, § 70-635; Laws 1944, Spec. Sess., c. 6, § 1(5), p. 111.

70-635.01 Repealed. Laws 1967, c. 422, § 2.

70-636 District; rates; agreement with security holders.

The directors of any district organized under or subject to Chapter 70, article 6, are authorized to agree with the holders of any such revenue debentures, notes, warrants, bonds, or other evidences of indebtedness as to the maximum or minimum amounts which such district shall charge and collect for water, electric energy, radioactive material or the energy therefrom, hydrogen, ethanol, or other service sold by the district.

Source: Laws 1933, c. 86, § 9, p. 350; Laws 1937, c. 152, § 6, p. 585; C.S.Supp.,1941, § 70-709; R.S.1943, § 70-636; Laws 1944, Spec. Sess., c. 6, § 1(7), p. 113; Laws 1959, c. 316, § 5, p. 1161; Laws 1981, LB 181, § 22; Laws 1986, LB 1230, § 44; Laws 2005, LB 139, § 13.

Potentially conflicting interests within a class are incompatible with the maintenance of a true class action and this aspect may be disposed of upon motion for summary judgment. *Blankenship v. Omaha P. P. Dist.*, 195 Neb. 170, 237 N.W.2d 86 (1976).

70-637 Construction, repairs, and improvements; contracts; sealed bids; exceptions; notice; when.

(1) A district shall cause estimates of the costs to be made by some competent engineer or engineers before the district enters into any contract for:

- (a) The construction, reconstruction, remodeling, building, alteration, maintenance, repair, extension, or improvement, for the use of the district, of any:
 - (i) Power plant or system;
 - (ii) Hydrogen production, storage, or distribution system;
 - (iii) Ethanol production or distribution system;

- (iv) Irrigation works; or
 - (v) Part or section of a system or works described in subdivisions (i) through (iv) of this subdivision; or
 - (b) The purchase of any materials, machinery, or apparatus to be used in the projects described in subdivision (1)(a) of this section.
- (2) If the estimated cost exceeds the sum of two hundred fifty thousand dollars, for those districts with a gross revenue of less than five hundred million dollars, or five hundred thousand dollars, for those districts with a gross revenue of five hundred million dollars or more, no such contract shall be entered into without advertising for sealed bids.
- (3) Notwithstanding the provisions of subsection (2) of this section and sections 70-638 and 70-639, the board of directors of the district may negotiate directly with sheltered workshops pursuant to section 48-1503.
- (4)(a) The provisions of subsection (2) of this section and sections 70-638 and 70-639 relating to sealed bids shall not apply to contracts entered into by a district in the exercise of its rights and powers relating to (i) radioactive material or the energy therefrom, (ii) any technologically complex or unique equipment, (iii) equipment or supplemental labor procurement from an electric utility or from or through an electric utility alliance, or (iv) any maintenance or repair, if the requirements of subdivisions (b) and (c) of this subsection are met.
- (b) A contract described in subdivision (a) of this subsection need not comply with subsection (2) of this section or section 70-638 or 70-639 if:
- (i) The engineer or engineers certify that, by reason of the nature of the subject matter of the contract, compliance with subsection (2) of this section would be impractical or not in the public interest;
 - (ii) The engineer's certification is approved by a two-thirds vote of the board; and
 - (iii) The district advertises notice of its intention to enter into such contract, the general nature of the proposed work, and the name of the person to be contacted for additional information by anyone interested in contracting for such work.
- (c) Any contract for which the board has approved an engineer's certificate described in subdivision (b) of this subsection shall be advertised in three issues not less than seven days between issues in one or more newspapers of general circulation in the district and in such additional newspapers or trade or technical periodicals as may be selected by the board in order to give proper notice of its intention to enter into such contract, and any such contract shall not be entered into prior to twenty days after the last advertisement.
- (5) The provisions of subsection (2) of this section and sections 70-638 and 70-639 shall not apply to contracts in excess of two hundred fifty thousand dollars, for those districts with a gross revenue of less than five hundred million dollars, or five hundred thousand dollars, for those districts with a gross revenue of five hundred million dollars or more, entered into for the purchase of any materials, machinery, or apparatus to be used in projects described in subdivision (1)(a) of this section if, after advertising for sealed bids:
- (a) No responsive bids are received; or
 - (b) The board of directors of such district determines that all bids received are in excess of the fair market value of the subject matter of such bids.

(6) Notwithstanding any other provision of subsection (2) of this section or sections 70-638 and 70-639, a district may, without advertising or sealed bidding, purchase replacement parts or services relating to such replacement parts for any generating unit, transformer, or other transmission and distribution equipment from the original manufacturer of such equipment upon certification by an engineer or engineers that such manufacturer is the only available source of supply for such replacement parts or services and that such purchase is in compliance with standards established by the board. A written statement containing such certification and a description of the resulting purchase of replacement parts or services from the original manufacturer shall be submitted to the board by the engineer or engineers certifying the purchase for the board's approval. After such certification, but not necessarily before the board review, notice of any such purchase shall be published once a week for at least three consecutive weeks in one or more newspapers of general circulation in the district and published in such additional newspapers or trade or technical periodicals as may be selected by the board in order to give proper notice of such purchase.

(7) Notwithstanding any other provision of subsection (2) of this section or sections 70-638 and 70-639, a district may, without advertising or sealed bidding, purchase used equipment and materials on a negotiated basis upon certification by an engineer that such equipment is or such materials are in compliance with standards established by the board. A written statement containing such certification shall be submitted to the board by the engineer for the board's approval.

Source: Laws 1933, c. 86, § 10, p. 351; C.S.Supp.,1941, § 70-710; Laws 1943, c. 146, § 4, p. 523; R.S.1943, § 70-637; Laws 1955, c. 268, § 1, p. 847; Laws 1959, c. 316, § 6, p. 1161; Laws 1967, c. 423, § 1, p. 1299; Laws 1975, LB 63, § 1; Laws 1981, LB 34, § 2; Laws 1984, LB 152, § 1; Laws 1984, LB 540, § 11; Laws 1986, LB 1230, § 45; Laws 1998, LB 1129, § 2; Laws 1999, LB 566, § 2; Laws 2005, LB 139, § 14; Laws 2007, LB636, § 6; Laws 2008, LB939, § 3; Laws 2009, LB300, § 1.

70-638 Contracts; sealed bids; advertisement.

Prior to advertisement for sealed bids, plans and specifications for the proposed work or materials shall be prepared and filed at the principal office or place of business of the district. Such advertisement shall be made in three issues, not less than seven days between issues, in one or more newspapers of general circulation in the district and in such additional newspapers or trade or technical periodicals as may be selected by the board in order to give proper notice of the receiving of bids. Such advertisement shall designate the nature of the work proposed to be done or materials proposed to be purchased, that the plans and specifications therefor may be inspected at the office of the district, giving the location thereof, and shall designate the time within which bids shall be filed, and the date, hour and place the same shall be opened.

Source: Laws 1933, c. 86, § 10, p. 351; C.S.Supp.,1941, § 70-710; Laws 1943, c. 146, § 4, p. 524; R.S.1943, § 70-638; Laws 1981, LB 34, § 3.

70-639 Letting of contracts; considerations.

The board of directors of the district may let the contract for such work or materials to the responsible bidder who submits the lowest and best bid or, in the sole discretion of the board, all bids tendered may be rejected, and readvertisement for bids made, in the manner, form, and time as provided in section 70-638. In determining whether a bidder is responsible, the board may consider the bidder's financial responsibility, skill, experience, record of integrity, ability to furnish repairs and maintenance services, ability to meet delivery or performance deadlines, and whether the bid is in conformance with specifications. Consideration may also be given by the board of directors to the relative quality of supplies and services to be provided, the adaptability of machinery, apparatus, supplies, or services to be purchased to the particular uses required, to the preservation of uniformity, and the coordination of machinery and equipment with other machinery and equipment already installed. No such contract shall be valid nor shall any money of the district be expended thereunder unless advertisement and letting shall have been had as provided in this section and sections 70-637 and 70-638.

Source: Laws 1933, c. 86, § 10, p. 351; C.S.Supp.,1941, § 70-710; Laws 1943, c. 146, § 4, p. 524; R.S.1943, § 70-639; Laws 1951, c. 223, § 1, p. 795; Laws 1955, c. 269, § 1, p. 848; Laws 1981, LB 34, § 4.

70-640 Contracts; Nebraska workmen preferred.

Such contract shall provide that, wherever possible, workmen who are citizens of Nebraska shall be employed by the contractor.

Source: Laws 1933, c. 86, § 10, p. 351; C.S.Supp.,1941, § 70-710; Laws 1943, c. 146, § 4, p. 524; R.S.1943, § 70-640.

70-641 Contracts; bonds; laws applicable.

All provisions of section 52-118, with reference to contractors' bonds, shall be applicable and effective as to any contract let pursuant to the provisions of sections 70-637 to 70-640, except that with respect to any electric generating facility, the penal sum of any contractor's bond shall be the lesser of the contract amount or two hundred million dollars. The bond required by section 52-118 may be satisfied by a corporate surety or letter of credit, or combination thereof, approved by the district.

Source: Laws 1933, c. 86, § 10, p. 351; C.S.Supp.,1941, § 70-710; Laws 1943, c. 146, § 4, p. 524; R.S.1943, § 70-641; Laws 2003, LB 655, § 9.

70-642 Damage, injury, or impairment to district property; emergencies; procedure.

In the event of sudden or unexpected damage, injury or impairment of such plant, works, system, or other property belonging to the district, or an order of a regulatory body which would prevent compliance with section 70-637, the board of directors may, in its discretion, declare an emergency, and proceed with the necessary construction, reconstruction, remodeling, building, alteration, maintenance, repair, extension, or improvement without first complying with the provisions of sections 70-637 to 70-641.

Source: Laws 1933, c. 86, § 10, p. 351; C.S.Supp.,1941, § 70-710; Laws 1943, c. 146, § 4, p. 523; R.S.1943, § 70-642; Laws 1981, LB 34, § 5.

70-642.01 Conditions created by war or national defense; contracting requirements inapplicable.

When, by reason of disturbed or disrupted economic conditions due to the prosecution of war or due to the operation of laws, rules or regulations of governmental authorities, whether enacted, passed, promulgated or issued under or due to the emergency or necessities of war or national defense, the contracting or purchasing by the district, for any one or more of the purposes mentioned in sections 70-637 to 70-640, is so restricted, prohibited, limited, allocated, regulated, rationed, or otherwise controlled, that the letting of contracts therefor, pursuant to the requirements of said sections, is legally or physically impossible or impractical, the provisions of said sections shall not apply to such contracts or purchases.

Source: Laws 1943, c. 146, § 4, p. 525; R.S.1943, § 70-642.01.

70-642.02 Contracts; interest of board member prohibited, when; effect.

No member of the board of directors shall be interested, directly or indirectly, in any contract to which the district, or any one for its benefit, is a party, and any such director who shall have such an interest shall be subject to removal from office therefor by the remaining members of the board, subject to review of such action by the district court of the county in which the district maintains its principal place of business. Such interest in any contract by a director shall void the obligation thereof on the part of the power district. Ownership of less than one percent of the outstanding stock of any one class of any corporation shall not constitute an interest, direct or indirect, within the meaning of this section. The receiving and holding of deposits, cashing of checks, and buying, selling, or holding bonds of indebtedness of a district by a financial institution, or any one or more of such activities, shall not be considered a contract within the meaning of this section.

Source: Laws 1943, c. 146, § 4, p. 525; R.S.1943, § 70-642.02; Laws 1969, c. 549, § 1, p. 2205; Laws 1971, LB 346, § 1.

70-642.03 Repealed. Laws 1997, LB 764, § 113.**70-642.04 Repealed. Laws 1997, LB 764, § 113.****70-643 District; funds; how expended; bond, when required.**

(1) Money of the district shall be paid out or expended only upon the authorization or approval of the board of directors by specific agreement, a written contract, or by a resolution. All money of the district shall be paid out or expended only by check, draft, warrant, or other instrument in writing, signed by the treasurer, assistant treasurer, or such other officer, employee, or agent of the district as shall be authorized by the treasurer to sign in his or her behalf; *Provided*, such authorization shall be in writing and filed with the secretary of the district.

(2) Money of the district paid out or expended shall be examined by the board of directors at a regular meeting within two months following such expenditure.

(3) In the event that the treasurer's bond shall not expressly insure the district against loss resulting from the fraudulent, illegal, negligent, or otherwise wrongful or unauthorized acts or conduct by or on the part of any and

every person authorized to sign checks, drafts, warrants, or other instruments in writing, there shall be procured and filed with the secretary of the district, together with the written authorization filed with the secretary of the board, a surety bond, effective for protection against such loss, in such form and penal amount and with such corporate surety as shall be approved in writing by the signed endorsement thereon of any two officers of the district other than the treasurer. The secretary shall report to the board at each meeting any such bonds filed, or any change in the status of any such bonds, since the last previous meeting of the board.

Source: Laws 1933, c. 86, § 11, p. 353; C.S.Supp.,1941, § 70-711; Laws 1943, c. 146, § 5, p. 525; R.S.1943, § 70-643; Laws 1981, LB 34, § 6.

70-644 District facilities and property; mortgage authorized; when.

No power plant, system, or irrigation works owned by a district shall be sold, alienated or mortgaged by such district, except under the circumstances set forth in this section and sections 70-645 to 70-653.02. If, in order to borrow money from the federal government, the Rural Electrification Administration, the Public Works Administration, from any loan or finance corporation or agency established under federal law, including the Reconstruction Finance Corporation, or its successor, or a cooperative nonprofit corporation organized to provide financing, it shall become necessary that a district mortgage, or otherwise hypothecate, any or all of its property or assets to secure the payment of a loan or loans made to it by or from such source or sources, such district is hereby authorized and empowered to do so.

Source: Laws 1933, c. 86, § 12, p. 353; Laws 1937, c. 152, § 7, p. 587; Laws 1939, c. 88, § 1, p. 382; C.S.Supp.,1941, § 70-712; Laws 1943, c. 146, § 6, p. 526; R.S.1943, § 70-644; Laws 1972, LB 1347, § 1.

This section does not conflict with the provisions of former section 70-657 prohibiting lease or alienation by a district of its franchise, plant, or physical equipment. State ex rel. Loseke v. Fricke, 126 Neb. 736, 254 N.W. 409 (1934).

70-645 Pledge of revenue; authorized; when.

Nothing in sections 70-644 to 70-653.02 contained shall prevent the district from assigning, pledging, or otherwise hypothecating, its revenue, incomes, receipts, or profits to secure the payment of indebtedness to the federal government; *Provided*, that the State of Nebraska shall never pledge its credit or funds, or any part thereof, for the payment or settlement of any indebtedness or obligation whatsoever of any district created under or subject to the provisions of Chapter 70, article 6.

Source: Laws 1933, c. 86, § 12, p. 353; Laws 1937, c. 152, § 7, p. 587; Laws 1939, c. 88, § 1, p. 382; C.S.Supp.,1941, § 70-712; Laws 1943, c. 146, § 6, p. 526; R.S.1943, § 70-645; Laws 1981, LB 181, § 23.

District does business at profit or loss so as to be subject to payment of charges under Federal Power Act. Central Neb. P. P. & I. Dist. v. Federal Power Commission, 160 F.2d 782 (8th Cir. 1947).

70-646 Repealed. Laws 1997, LB 658, § 16.

70-646.01 District property; alienation to private power producers prohibited; exceptions.

Except as provided in sections 18-412.07 to 18-412.09, 70-628.02 to 70-628.04, or 70-644 to 70-653.02, the plant, property, or equipment of a public power district shall never, by sale under foreclosure, receivership, bankruptcy proceedings, outright sale, or lease, become the property or come under the control of any private person, firm, or corporation engaged in the business of generating, transmitting, or distributing electricity for profit. This restriction does not apply to: (1) The exercise by a district of its rights and powers with respect to radioactive material or the energy therefrom; (2) the sales of ethanol production or distribution facilities; (3) the sales of hydrogen production, storage, or distribution facilities; (4) joint participation in any electric generation or transmission facility pursuant to sections 18-412.07 to 18-412.09 and 70-628.02 to 70-628.04; or (5) a nonprofit cooperative corporation that has provided financing for property, projects, or undertakings when such property is covered by a mortgage, pledge of revenue, or other hypothecation to secure the payment of a loan or loans made to a district. This restriction does not apply to a sale, transfer, or lease of property to a nonprofit electric cooperative corporation engaged in the retail distribution of electric energy in established service areas, which cooperative corporation is organized under the laws of the State of Nebraska or domesticated in the State of Nebraska, except that such property so acquired by a cooperative nonprofit corporation organized to provide financing or by a nonprofit electric cooperative corporation shall never become the property or come under the control of any person, firm, or corporation engaged in the business of generating, transmitting, or distributing electricity for profit. This section shall not be construed as an expansion of the authority of public power districts to engage in telecommunications services as may otherwise be authorized by statute.

Source: Laws 1997, LB 658, § 12; Laws 2005, LB 139, § 15.

70-647 Indebtedness; default; possession by creditors; agreement authorized; terms; property restored to district; when.

In order to protect and safeguard the security and the rights of the purchasers or holders of revenue debentures, notes, warrants, or other evidences of indebtedness, issued by any district organized under or subject to Chapter 70, article 6, each such district may agree with such purchasers or holders that in the event of default in the payment of interest on, or principal of, any such revenue debentures, notes, warrants, or other evidences of indebtedness, or in the event of default in performance of any duty or obligation of such district in connection therewith, such purchasers or holders, or trustee selected by them, may take possession and control of the business and the property of the district, and proceed to operate the same, and to collect and receive the income thereof, and after paying all necessary and proper operating expenses and all other proper disbursements or liabilities made or incurred, use the surplus, if any there be, of the revenue of the district as follows: (1) In the payment of all outstanding past-due interest on each issue of revenue debentures, notes, warrants, or other evidences of indebtedness, so far as such net revenue will go, and paying pro rata the interest due on each issue thereof when there is not enough to pay in full all of the interest; and (2) if any sums shall remain after the payment of interest as aforesaid, then in the payment of the revenue debentures, notes, warrants, or other evidences of indebtedness, which, by the terms thereof, shall be due and payable on each outstanding issue in accordance with the terms thereof, and paying pro rata when the money available is

not sufficient to pay in full. When all legal taxes and charges, and all arrears of interest, and all matured revenue debentures, notes, warrants, or other evidences of indebtedness, have been paid in full, the control of the business and the possession of the property of the district shall then be restored to such district. The privilege herein granted shall be a continuing one as often as the occasion therefor may arise.

Source: Laws 1937, c. 152, § 7, p. 587; Laws 1939, c. 88, § 1, p. 382; C.S.Supp.,1941, § 70-712; Laws 1943, c. 146, § 6, p. 526; R.S. 1943, § 70-647; Laws 1981, LB 181, § 24.

70-648 Receivership; when authorized; discharge of receiver; when.

The board of directors of any district organized under or subject to Chapter 70, article 6, issuing revenue debentures, notes, warrants, or other evidences of indebtedness is hereby also authorized and empowered to agree and contract with the purchasers or holders thereof that in the event of default in the payment of interest on, or principal of, any such revenue debentures, notes, warrants, or other evidences of indebtedness, issued, or in the event of default in the performance of any duty or obligation under any agreement by such district, the holder or holders of such revenue debentures, notes, warrants, or other evidences of indebtedness then outstanding shall be entitled as a matter of right, upon application to a court of competent jurisdiction, to have appointed a receiver of the business and property of the district, including all tolls, rents, revenue, issues, income, receipts, profits, benefits, and additions derived, received or had thereof or therefrom, with power to operate and maintain such business and property, collect, receive, and apply all revenue, income, profits, and receipts arising therefrom, and prescribe rates, tolls, and charges, in the same way and manner as the district might do. Whenever all defaults in the payment of principal of, and interest on, such revenue debentures, notes, warrants, or other evidences of indebtedness, and any other defaults under any agreement made by the district, shall have been made good, such receiver shall be discharged by the court and shall therefor surrender control of the business and possession of the property in his or her hands to the district.

Source: Laws 1937, c. 152, § 7, p. 587; Laws 1939, c. 88, § 1, p. 382; C.S.Supp.,1941, § 70-712; Laws 1943, c. 146, § 6, p. 527; R.S. 1943, § 70-648; Laws 1981, LB 181, § 25.

70-649 Plant and system; sale to public agency; authorized; transfer of distribution facilities; restrictions; exception.

Any public power district or public power and irrigation district may sell to any public power district, public power and irrigation district, irrigation district, city or village, any power plant, electric generating plant, electric distribution system, or any parts thereof, for such sums and upon such terms as the board of directors of such public power district or public power and irrigation district may deem fair and reasonable. As a part of an agreement establishing retail service areas pursuant to section 70-1002, a district may transfer distribution facilities having a rating of less than fifteen thousand volts to a nonprofit rural electric membership corporation in exchange for similar facilities transferred to the district by the membership corporation with a net cash differential to be paid by either party not to exceed ten thousand dollars in any one transaction, but this restriction shall not apply to a sale, transfer or

lease of property to a nonprofit electric cooperative corporation engaged in the retail distribution of electric energy in established service areas and which cooperative corporations are organized under the laws of the State of Nebraska or domesticated in the State of Nebraska; *Provided*, that such property so acquired by a nonprofit electric cooperative corporation shall never become the property or come under the control of any person, firm, or corporation engaged in the business of generating, transmitting or distributing electricity for profit.

Source: Laws 1939, c. 88, § 1, p. 382; C.S.Supp.,1941, § 70-712; Laws 1943, c. 146, § 6, p. 528; R.S.1943, § 70-649; Laws 1963, c. 397, § 21, p. 1267; Laws 1969, c. 551, § 2, p. 2209.

70-650 Plant and system; sale to city or village; when required; valuation and severance damages; procedure.

Whenever any public power district or public power and irrigation district shall, as herein provided, acquire, by purchase, lease, or otherwise, any electric distribution system, or any part or parts thereof, situated within or partly within any city or village, if any part of such system be within such city or village, such acquisition shall be upon the condition that such city or village may purchase, and such district shall be required to sell to such city or village, such electric distribution system, situated within or partly within such city or village, but not within the corporate limits of any other city or village, by paying to such public power district or public power and irrigation district such sum as is fair and reasonable, including reasonable severance damages. If any city or village and such district shall fail to agree upon a price and terms for the sale of such property to such city or village, the procedure for determining such price and terms of sale, and for compelling such sale shall be the same as is provided by sections 19-701 to 19-706. In determining the amount of such severance damages, the court shall take into account, together with other relevant factors, the economic effect, if any, caused by the severance therefrom of the part taken upon the system as a going concern as it will be and remain after the severance. When the sum that is fair and reasonable shall have been determined as above provided, the court shall deduct therefrom and allow as a credit upon such sum an amount that bears the same proportion to such sum as the amount of the bonds that have been paid, redeemed or liquidated, and the reserves established therefor by said district, out of the earnings from the operation of the district while such city or village was within and a part of such district, bears to the total amount of the bonded indebtedness of such district issued to finance the purchase price and the cost of construction of the entire property of such district. In entering its award the court shall show how much of the total thereof was allowed for the physical property taken and how much was allowed for other values and damages, if any.

Source: Laws 1939, c. 88, § 1, p. 382; C.S.Supp.,1941, § 70-712; Laws 1943, c. 146, § 6, p. 528; R.S.1943, § 70-650; Laws 1945, c. 161, § 1, p. 524.

Cross References

Eminent domain powers of municipalities:

Cities of the first class, see section 16-674 and Chapter 19, article 7.

Cities of the metropolitan class, see sections 14-366 and 14-376.

Cities of the primary class, see section 15-229 and Chapter 19, article 7.

Cities of the second class and villages, see Chapter 19, article 7.

Prior case construing this section distinguished. *Inslee v. City of Bridgeport*, 153 Neb. 559, 45 N.W.2d 590 (1951).

The taking under eminent domain by a city from a public power district is limited to the electric distribution system. *Consumers Public Power Dist. v. Eldred*, 146 Neb. 926, 22 N.W.2d 188 (1946).

Power to purchase other electric plants is conferred. *State ex rel. Johnson v. Consumers Public Power Dist.*, 143 Neb. 753, 10 N.W.2d 784 (1943).

This statute, providing a method of purchase by agreement which may be used by a municipal corporation desiring to buy a public utility system from a public power district, does not

conflict with article 7 of Chapter 19 making provision for purchase of public utilities through the exercise of the power of eminent domain. *State ex rel. Consumers Public Power District v. Boettcher*, 138 Neb. 22, 291 N.W. 709 (1940).

Provision of this section that a city or village acquiring a distribution system from a public power district may not purchase lines within the corporate limits of any other city or village indicates the Legislature had no intention to give to a city or village any coercive power to extend its utility service into the boundaries of another municipality. *Central Power Co. v. Nebraska City*, 112 F.2d 471 (8th Cir. 1940).

70-650.01 Electric distribution system; city or village; conveyed on request; when; notice required; referendum.

Except as provided in sections 70-1101 to 70-1106, whenever any public power district or public power and irrigation district shall have acquired, by purchase, lease or otherwise, any electric distribution system, or any part or parts thereof, situated within or partly within any city or village, and such district shall have fully paid and redeemed, or have accumulated reserves sufficient for the redemption of, all of the bonds or other obligations of the district evidencing the indebtedness incurred as the cost of construction or the purchase price of its lines, works and system, then and in that event, whenever any such city or village shall so request, the said district shall convey without cost all of its right, title and interest in and to its electric distribution system, as distinguished from its generating plants and transmission lines, to the said city or village within the territorial limits of which such system is located. The request of such city or village shall be exercised by a resolution duly adopted by its governing body. Such resolution shall not become effective until thirty days' notice of the adoption thereof shall have been given by the governing body by publication once each week for three successive weeks in some legal newspaper published and of general circulation in such city or village, or if no such newspaper is published therein, then by posting in five or more public places therein. If, within thirty days after the last publication of such notice or posting thereof, a referendum petition signed by qualified electors of such city or village equal in number to at least twenty percent of the vote cast at the last general municipal election held therein shall be filed with the municipal clerk, such resolution shall not become effective until it has been approved by a vote of the electors of such municipality at any general or special municipal election. If a majority of the voters voting on the issue vote against such resolution, the resolution shall not become effective. If no such petitions are filed, the resolution shall become effective at the expiration of such thirty-day period. In the absence of an agreement between any city or village and the public power district, the city or village may at any time determine what shall be included in the term distribution system by a declaratory judgment in which the public power district or public power and irrigation district owning the distribution system shall be joined. This section shall not: (1) Prevent the refinancing or changing of the form of the outstanding indebtedness of the district existing on May 4, 1945, where the amount of the outstanding bonds or other evidences of indebtedness representing the cost of existing facilities shall not be increased nor the time of payment extended by any obligations for which the revenue received through the said electric distribution systems is pledged, or (2) prevent the issuance of other and different series of bonds of the district representing the cost of acquisition or construction of additional electric facilities, or the pledging of the revenue of such additional facilities for the payment of such

other or further series of bonds, or to prevent the board of directors of the said district, by a duly adopted resolution, from making reasonable determinations of the amount of the revenue of the district attributable to such additional facilities.

Source: Laws 1945, c. 161, § 2, p. 525; Laws 1963, c. 398, § 1, p. 1269; Laws 1963, c. 393, § 1, p. 1247.

Cross References

Retail electric service, city or village, see sections 70-1101 to 70-1106.

By this section the Legislature intended that the courts make a factual determination in each case as to what is included in an electrical transmission system or distribution system. Nebraska P. P. Dist. v. City of York, 212 Neb. 747, 326 N.W.2d 22 (1982).

Municipality is permitted to acquire distribution system from public power district without cost on January 1, 1972. City of

O'Neill v. Consumers P. P. Dist., 179 Neb. 773, 140 N.W.2d 644 (1966).

Conflicting interpretation of this section by parties noted but not decided. Inslee v. City of Bridgeport, 153 Neb. 559, 45 N.W.2d 590 (1951).

70-650.02 Repealed. Laws 1982, LB 592, § 2.

70-651 Repealed. Laws 1959, c. 317, § 6.

70-651.01 Districts; payments in lieu of taxes.

Every public power district or public power and irrigation district owning property with respect to which it made payments in lieu of taxes in the 1957 calendar year, shall, so long as it continues to own such property, continue to pay annually the same amounts in the same manner. The directors of any such district shall not have any personal liability by reason of such payments made either before or after September 28, 1959.

Source: Laws 1959, c. 317, § 1, p. 1163.

70-651.02 Districts; payments in lieu of taxes; distribution; use.

The officer receiving payment under section 70-651.01 shall distribute to the state and to each governmental subdivision of the state entitled thereto a part of such payment equivalent to that part of the payment which it received in 1957 in lieu of taxes for property located within its boundaries. The payment may be used for such purposes as the governing body of the state or governmental subdivision prescribes.

Source: Laws 1959, c. 317, § 2, p. 1163.

70-651.03 Districts; gross revenue tax; how determined.

Beginning in 1960, every public corporation and political subdivision of the state, which is organized primarily to provide electricity or irrigation and electricity, and which sells electricity at retail within incorporated cities or villages, shall on or before April 1, of each year, pay to the county treasurer of the county in which any such incorporated city or village may be located, a sum equivalent to five percent of the gross revenue derived by it during the preceding calendar year from retail sales of electricity within such incorporated city or village, less an amount equivalent to the amount paid by such public corporation in lieu of taxes in the 1957 calendar year with respect to its properties in such city or village.

Source: Laws 1959, c. 317, § 3, p. 1163.

70-651.04 Districts; gross revenue tax; distribution.

All payments which are based on retail revenue from each incorporated city or village shall be divided and distributed by the county treasurer to that city or village, to the school districts located in that city or village, to any learning community located in that city or village for payments distributed prior to September 1, 2017, and to the county in which may be located any such incorporated city or village in the proportion that their respective property tax levies in the preceding year bore to the total of such levies, except that the only learning community levies to be included are the common levies for which the proceeds are distributed to member school districts pursuant to section 79-1073.

Source: Laws 1959, c. 317, § 4, p. 1164; Laws 1979, LB 187, § 183; Laws 1993, LB 346, § 6; Laws 1995, LB 732, § 1; Laws 2010, LB1070, § 2; Laws 2016, LB1067, § 7.

70-651.05 Public power districts; payment made in lieu of other taxes and fees; exceptions.

All payments made under sections 70-651.01 to 70-651.05 shall be in lieu of all other taxes, payments in lieu of taxes, franchise payments, occupation taxes, and excise taxes but shall not be in lieu of motor vehicle licenses and wheel taxes, permit fees, fuel taxes, and other such excise taxes or general sales taxes levied against the public generally.

Source: Laws 1959, c. 317, § 5, p. 1164; Laws 1997, LB 271, § 37; Laws 1998, LB 306, § 16.

70-652 Repealed. Laws 1959, c. 317, § 6.

70-653 Repealed. Laws 1959, c. 317, § 6.

70-653.01 Electric distribution system; purchase by city or village; payment in lieu of taxes.

Any city or village which has purchased or acquired before June 10, 1947, the plant or property of an existing electric distribution system furnishing electric energy for heat, light, power or other purposes for use within such city or village from any public power district or public power and irrigation district may annually pay out of the revenue of such system to the State of Nebraska, county, city, village or school district in which such public utility is located, in lieu of taxes, a sum equal to the amount which the state, county, city, village or school district received in lieu of taxes from the public power district or public power and irrigation district.

Source: Laws 1947, c. 227, § 1, p. 721.

70-653.02 Cities and villages; payment in lieu of taxes; how paid.

All sums of money to be paid by such cities or villages in lieu of taxes may be paid at the times, places, and to the tax-collecting officers, as now or may hereafter be provided by law for the payment of taxes, as long as such city or village shall continue to be the owner of such property, and such tax-collecting officers are hereby authorized and directed to receive and collect the same and distribute all money so received to the governmental subdivisions entitled thereto.

Source: Laws 1947, c. 227, § 2, p. 722.

70-654 Repealed. Laws 1959, c. 317, § 6.**70-655 Reasonable rates required; negotiated rates authorized; conditions.**

(1) Except as otherwise provided in this section, the board of directors of any district organized under or subject to Chapter 70, article 6, shall have the power and be required to fix, establish, and collect adequate rates, tolls, rents, and other charges for electrical energy, water service, water storage, and for any and all other commodities, including ethanol and hydrogen, services, or facilities sold, furnished, or supplied by the district, which rates, tolls, rents, and charges shall be fair, reasonable, nondiscriminatory, and so adjusted as in a fair and equitable manner to confer upon and distribute among the users and consumers of commodities and services furnished or sold by the district the benefits of a successful and profitable operation and conduct of the business of the district.

(2) The board of directors may negotiate, fix, establish, and collect rates, tolls, rents, and other charges for users and consumers of electrical energy and associated services or facilities different from those of other users and consumers. Any negotiated rates, tolls, rents, and other charges for a commercial or industrial customer shall be effective for no more than five years and in no case shall such rates, tolls, rents, and charges include a production component that is less than the incremental production cost of supplying such services if (a) such customer has entered an agreement with the state or any political subdivision to provide an economic development project pursuant to state or local law and (b) such economic development project has projected new or additional electrical load requirements greater than five hundred kilowatts and a minimum annual load demand factor of sixty percent during the applicable billing period. This subsection shall also apply to any nonprofit corporation organized for the purpose of furnishing electric service pursuant to the Electric Cooperative Corporation Act or the Nebraska Nonprofit Corporation Act, any agency created pursuant to the Municipal Cooperative Financing Act, and any municipality engaged in furnishing electrical service to customers at retail or wholesale.

(3) In order to facilitate the merger and consolidation of districts, the board of directors of a merged or consolidated district may negotiate, fix, establish, and collect rates, tolls, rents, and other charges for consumers in the service area of one or more of the predecessor districts which are different than rates, tolls, rents, and other charges for consumers in the remaining service area of the merged or consolidated district. Any different rates, tolls, rents, and other charges pursuant to this subsection shall be effective for no more than five years after the date of merger or consolidation and shall be based on cost of service or other rate studies showing that adoption of dissimilar rates for consumers in otherwise similar rate classes is needed to effectuate the merger or consolidation. This subsection shall also apply in the event of a merger or consolidation of any nonprofit corporation organized for the purpose of furnishing electric service pursuant to the Electric Cooperative Corporation Act or the Nebraska Nonprofit Corporation Act.

Source: Laws 1933, c. 86, § 13, p. 353; Laws 1937, c. 152, § 8, p. 589; Laws 1939, c. 89, § 1, p. 388; C.S.Supp., 1941, § 70-713; R.S. 1943, § 70-655; Laws 1981, LB 181, § 26; Laws 1986, LB 1230, § 47; Laws 1995, LB 828, § 2; Laws 2001, LB 243, § 1; Laws 2005, LB 139, § 16; Laws 2012, LB1043, § 1.

Cross References

Electric Cooperative Corporation Act, see section 70-701.

Municipal Cooperative Financing Act, see section 18-2401.

Nebraska Nonprofit Corporation Act, see section 21-1901.

Rent collected under this section would not necessarily have to be cash rent, but would only have to be reasonable consideration. *Jeffrey Lake Dev. v. Central Neb. Pub. Power and Irr. Dist.*, 262 Neb. 515, 633 N.W.2d 102 (2001).

A dissimilar rate may not be imposed for similar service solely on the basis that the additional source of the power or energy is more costly than previous sources. All of the sources must properly be blended into a rate which results in all customers obtaining the same service under the same conditions being charged the same rate. *McGinley v. Wheat Belt P. P. Dist.*, 214 Neb. 178, 332 N.W.2d 915 (1983).

Potentially conflicting interests within a class are incompatible with the maintenance of a true class action and this aspect may be disposed of upon motion for summary judgment. *Blankenship v. Omaha P. P. Dist.*, 195 Neb. 170, 237 N.W.2d 86 (1976).

It was intended to permit the business of a power district to be operated in a successful and profitable manner. *City of O'Neill v. Consumers P. P. Dist.*, 179 Neb. 773, 140 N.W.2d 644 (1966).

Board of directors is authorized to establish and collect adequate rates for electrical energy. *York County Rural P. P. Dist. v. O'Connor*, 172 Neb. 602, 111 N.W.2d 376 (1961).

Powers conferred are intended to permit district to be operated in a successful and profitable manner. *United Community Services v. Omaha Nat. Bank*, 162 Neb. 786, 77 N.W.2d 576 (1956).

Under assumed contract, district could not increase annual maintenance charge. *Faught v. Platte Valley P. P. & I. Dist.*, 155 Neb. 141, 51 N.W.2d 253 (1952).

District is not exempt from payment of charges under Federal Power Act. *Central Neb. P. P. & I. Dist. v. Federal Power Commission*, 160 F.2d 782 (8th Cir. 1947).

70-656 Repealed. Laws 1963, c. 425, art. 8, § 2.

70-657 Repealed. Laws 1997, LB 658, § 16.

70-658 Existing utility; lease, purchase, or acquisition by district; franchise and contracts; compliance required.

In the event that any such district shall lease, purchase or acquire, in any manner, the generating plant, distribution system or other property of an existing utility then or theretofore furnishing electrical energy for heat, light, power, or other purposes, for the use or benefit of any city, of whatever class, or village in the State of Nebraska, or its inhabitants, and for use within the corporate limits of such city or village, such district shall be bound by, shall carry out, and shall perform the terms and conditions of any franchise or contract assigned to such district, and shall comply with the provisions of any existing applicable laws or ordinances under which such existing utility, such district's predecessor or assignor, operated at the time such lease, purchase or acquisition of the generating plant, distribution system or other property of such existing utility shall have been made.

Source: Laws 1939, c. 89, § 1, p. 388; C.S.Supp.,1941, § 70-713; R.S. 1943, § 70-658.

70-659 Operation within city or village by district; franchise required.

Any such district shall be required at all times to have a valid and subsisting franchise, either running to it as original grantee from such city or village, or assigned to it by or through a grantee of the city or village, if such district proposes to generate, distribute and sell, or to distribute and sell, electrical energy to such city or village or to its inhabitants, as a condition precedent to the operation of such district's electric utility or utilities within such city or village, in every case and to the same extent as where a private corporation is required to have such valid and subsisting franchise to operate its electric utility or utilities within such city or village.

Source: Laws 1939, c. 89, § 1, p. 388; C.S.Supp.,1941, § 70-713; R.S. 1943, § 70-659.

A public power project is to extend its lines into another municipal corporation's boundaries only upon contract, agreement, or franchise. *Central Power Co. v. Nebraska City*, 112 F.2d 471 (8th Cir. 1940).

70-660 Franchise to operate utility; terms and conditions; rates prescribed.

All franchises granted by a city or village to any such district, to operate such district's electric utility or utilities within the corporate limits of such city or village, may provide the maximum rates that may be charged by such district for furnishing electrical energy to such city or village, or to its inhabitants, during the franchise period. Such franchises shall be granted in the same manner and upon the same terms and conditions as may now or hereafter be provided by law for granting franchises to private corporations by such cities or villages.

Source: Laws 1939, c. 89, § 1, p. 388; C.S.Supp.,1941, § 70-713; R.S. 1943, § 70-660.

70-661 Contracts with city or village; terms and conditions.

Contracts, other than franchises, which such city or village is empowered to make with any such district to furnish such city or village, or its inhabitants, with electrical energy, shall be made in the same manner and upon the same terms and conditions as such city or village is now or hereafter empowered to make with any private corporation to furnish such city or village, or its inhabitants, with electrical energy.

Source: Laws 1939, c. 89, § 1, p. 388; C.S.Supp.,1941, § 70-713; R.S. 1943, § 70-661.

Under former act, concluding proviso of this section was unconstitutional as special legislation. *State ex rel. Johnson v. Consumers Public Power Dist.*, 143 Neb. 753, 10 N.W.2d 784 (1943).

70-662 District; filings; amendments to petition for creation; amendments to charter; authorized; restriction.

(1) A petition for the creation of a district organized under or subject to the provisions of Chapter 70, article 6, may be amended as provided in this section. Any district, now existing or hereafter created under or subject to Chapter 70, article 6, may file with the Nebraska Power Review Board a petition to amend its charter to eliminate, detach, or reduce area from or add to, increase, or enlarge its chartered territory as required or authorized by Chapter 70, article 6, or subdivide area and territory from within the boundaries of such district, or amend its charter to provide for a change in the general description of the nature of the business in which the district is engaged and the location and method of operation of the power plants and systems or irrigation works of the district proposed in its charter, as long as the plants, systems, and works, the operation of the same, the exercise of powers, and the assumption of duties and responsibilities, of or on the part of such district, do not nullify, conflict with, or materially affect those of, or on the part of, any other district.

(2) Any such district may amend its charter to provide for a change in its name or a change in the location of its principal place of business and may reduce or increase the number of members of its board of directors. No such elimination or detachment, increase or enlargement, or subdivision of the territory of a district, change in its principal place of business, its name, or the number of members of its board of directors, or change in the general description of the nature of its business or methods of operation shall occur

unless authorized by the affirmative vote of three-fifths of all the directors of the district involved.

Source: Laws 1937, c. 152, § 9, p. 589; C.S.Supp.,1941, § 70-717; R.S. 1943, § 70-662; Laws 1945, c. 158, § 1, p. 521; Laws 1955, c. 267, § 5, p. 845; Laws 1957, c. 291, § 1, p. 1046; Laws 1981, LB 181, § 27; Laws 1986, LB 949, § 14.

District may amend its charter. *Schroll v. City of Beatrice*, 169 Neb. 162, 98 N.W.2d 790 (1959).

Approved petition is charter of the district. *Custer Public Power Dist. v. Loup River Public Power Dist.*, 162 Neb. 300, 75 N.W.2d 619 (1956).

70-663 Amendment; approval procedure.

Upon such authorization occurring, the proposed amendment shall thereupon be submitted to the Nebraska Power Review Board, together with a petition setting forth the reasons for the adoption of such amendment, and requesting that the same be approved. The Nebraska Power Review Board shall then cause notice to be given by publication for three consecutive weeks in two legal newspapers of general circulation within such district. Such notice shall set forth in full the proposed amendment and set a date, not sooner than three weeks after the last date of publication of the notice, for protests, complaints, or objections to be filed with the Nebraska Power Review Board in opposition to the adoption of such amendment. The cost of such publication shall be paid by such district. If any person residing in such district, or affected by the proposed amendment, shall, within the time provided, file a protest, complaint, or objection, the Nebraska Power Review Board shall schedule a hearing and give due notice thereof to the district, the district's representative, and the person who filed such protest, complaint, or objection. Any person filing a protest, complaint, or objection may appear at such hearing and contest the approval by the Nebraska Power Review Board of such proposed amendment. After all protests, complaints, or objections have been heard, the Nebraska Power Review Board shall act upon the petition and either approve or disapprove the amendment. If no protests, complaints, or objections are properly filed, the board shall either approve the amendment without a hearing or schedule a hearing to determine whether or not the amendment should be approved. If a hearing is scheduled, due notice shall be provided to the district and the district representative.

Source: Laws 1937, c. 152, § 9, p. 589; C.S.Supp.,1941, § 70-717; R.S. 1943, § 70-663; Laws 1981, LB 181, § 28; Laws 1983, LB 366, § 1.

70-664 Amendment; board approval; certificate; filing.

Unless it shall appear affirmatively that the adoption of such proposed amendment will be contrary to the best interests of such district, or that it will jeopardize and impair the rights of the creditors of such districts, or of other persons, the Nebraska Power Review Board shall issue in duplicate a certificate of approval of such proposed amendment, and cause one copy to be filed in the office of the Secretary of State of the State of Nebraska and one copy to be filed in the office of the county clerk of the county in which is located the principal place of business of the district.

Source: Laws 1937, c. 152, § 9, p. 589; C.S.Supp.,1941, § 70-717; R.S. 1943, § 70-664; Laws 1981, LB 181, § 29.

70-665 Amendment; when effective.

Such proposed amendment shall become effective and in full force immediately upon the issuance of such certificate of approval by the Nebraska Power Review Board. Thereupon and thereafter the district shall, as in case of the original district, be a public corporation and political subdivision, and operate and function accordingly in such reduced and subdivided area, or such increased and enlarged area, under or subject to the terms, powers, privileges, and conditions of Chapter 70, article 6.

Source: Laws 1937, c. 152, § 9, p. 589; C.S.Supp.,1941, § 70-717; R.S. 1943, § 70-665; Laws 1981, LB 181, § 30.

70-666 Dissolution; procedure.

Whenever a petition signed by a majority of the members of the board of directors or by twenty-five or more qualified electors of the state residing within the territorial boundaries of any district organized under or subject to Chapter 70, article 6, shall be presented to the Nebraska Power Review Board, praying for the dissolution of such district, and it shall appear from the petition that such district has no property of any kind, owes no debts of any kind, that the district is not functioning, has ceased to function, and probably will not function in the future, the Nebraska Power Review Board shall forthwith publish a notice for three consecutive weeks in the legal newspaper published in the district which has the largest circulation therein, or, if no legal newspaper is published in the district, then in any legal newspaper widely circulated therein, setting forth, in substance and in a clear and concise manner, the nature and prayer of the petition, and setting a time and place for a public hearing by the Nebraska Power Review Board upon the petition. After such hearing and such independent investigation as may be deemed advisable, the Nebraska Power Review Board shall grant or reject the prayer of the petition, and, if the prayer of the petition is granted, the Nebraska Power Review Board shall thereupon issue its certificate declaring the district dissolved and terminated. One duly certified copy of such certificate shall be immediately filed by the Nebraska Power Review Board in its office with the original organization records of the district. The Nebraska Power Review Board shall also immediately file one such certified copy in the office of the Secretary of State, and another such certified copy in the office of the county clerk of the county in which the principal place of business of such district was last located. The district shall thereupon be dissolved and cease to exist. The persons filing such petition for dissolution shall advance and pay the necessary expense incurred by the Nebraska Power Review Board in the investigations made, and the proceedings and hearings held or conducted, pursuant to the provisions of this section.

Source: Laws 1935, c. 146, § 1, p. 541; C.S.Supp.,1941, § 70-716; Laws 1943, c. 146, § 7, p. 530; R.S.1943, § 70-666; Laws 1981, LB 181, § 31.

70-667 Plants, systems, and works; construction or operation; works of internal improvement; laws applicable; eminent domain; procedure; when available.

All power plants and systems, all hydrogen production, storage, or distribution systems, all ethanol production or distribution systems, and all irrigation

works constructed, acquired, used, or operated by any district organized under or subject to Chapter 70, article 6, or proposed by such district to be so constructed, acquired, owned, used, or operated are hereby declared to be works of internal improvement. All laws applicable to works of internal improvement and all provisions of law applicable to electric light and power corporations, irrigation districts, or privately owned irrigation corporations, the use and occupation of state and other public lands and highways, the appropriation, acquisition, or use of water, water power, water rights, or water diversion or storage rights, for any of the purposes contemplated in such statutory provisions, the manner or method of construction and physical operation of power plants, systems, transmission lines, and irrigation works, as herein contemplated, shall be applicable, as nearly as may be, to all districts organized under or subject to Chapter 70, article 6, and in the performance of the duties conferred or imposed upon them under such statutory provisions. Such laws, provisions of law, or statutory provisions are hereby made applicable to all irrigation works and facilities operated by irrigation divisions of public power and irrigation districts organized under Chapter 70, article 6, and shall include, but not be limited to, the right of such district to exercise the powers conferred upon districts by Chapters 31 and 46, relating to operation, maintenance, rehabilitation, construction, reconstruction, repairs, extension, recharge for ground water, and surface and subsurface drainage projects and the assessment of the cost thereof to the lands benefited thereby. The right to exercise the power of eminent domain is conferred, except that this power may not be exercised for the purpose of condemning property for use by a privately operated ethanol production or distribution facility or a privately operated hydrogen production, storage, or distribution facility. The procedure to condemn property shall be exercised in the manner set forth in Chapter 76, article 7.

Source: Laws 1933, c. 86, § 7, p. 349; Laws 1941, c. 138, § 1, p. 545; C.S.Supp.,1941, § 70-707; R.S.1943, § 70-667; Laws 1951, c. 101, § 106, p. 496; Laws 1971, LB 626, § 2; Laws 1973, LB 189, § 1; Laws 1981, LB 181, § 32; Laws 1986, LB 1230, § 49; Laws 2005, LB 139, § 17.

1. Liability of district
2. Measure of damages
3. Miscellaneous

1. Liability of district

Legislature is without power to make a grant in fee of, or an easement over, public school lands without compensation for the damage for such taking or use. *State v. Platte Valley Public Power and Irrigation Dist.*, 143 Neb. 661, 10 N.W.2d 631 (1943).

District is liable in damages for public school lands taken under condemnation proceedings for irrigation canal. *State ex rel. Johnson v. Central Nebraska Public Power & Irrigation Dist.*, 143 Neb. 153, 8 N.W.2d 841 (1943).

A public power district which, by constructing and maintaining a tailrace, destroys by drainage the subirrigation waters of lands of others, is liable for resulting damages. *Luchsinger v. Loup River Public Power Dist.*, 140 Neb. 179, 299 N.W. 549 (1941).

2. Measure of damages

Where land is taken for temporary use only, measure of compensation is not the market value but what the property is fairly worth during the time which it is held. *Pierce v. Platte*

Valley Public Power & Irr. Dist., 143 Neb. 898, 11 N.W.2d 813 (1943).

The measure of damages recoverable by a landowner, whose land is permanently injured by seepage water, is the difference between the reasonable market value of the property before and after the injury plus the value of the crop injured in the field at the time of seepage, but shall not include compensation for loss of the use of the land for subsequent years caused by the same seepage. *Heiden v. Loup River Public Power Dist.*, 139 Neb. 754, 298 N.W. 736 (1941).

Where, in a condemnation proceeding, both parties adopt an incorrect theory as to the measure of damages and an instruction is given fairly reflecting that theory, it will be adhered to on appeal. *Behle v. Loup River Public Power Dist.*, 138 Neb. 566, 293 N.W. 413 (1940).

Damages recoverable in the condemnation by an irrigation district of land damaged by seepage from the irrigation reservoir are only those arising from the condemnation, and evidence as to the value of the land must be based upon its value in the condition in which it was at the time of the condemnation. In re

Platte Valley Public Power & Irrigation Dist., 137 Neb. 313, 289 N.W. 383 (1939).

Damages for injury to land due to seepage from an irrigation reservoir are not continuous in character but original and recoverable in one action; the measure of such damages is the difference in value of the land before and after the dam was erected, taking into consideration the uses to which the land was put and for which it was reasonably suited. *Applegate v. Platte Valley Public Power & Irrigation Dist.*, 136 Neb. 280, 285 N.W. 585 (1939).

3. Miscellaneous

Omaha Public Power District subject to garnishment process to same extent as any electric and power company. *Schreiner v. Irby Constr. Co.*, 184 Neb. 222, 166 N.W.2d 121 (1969).

All the obligations imposed and rights declared under other specified statutes are preserved by this section. *State ex rel. Dawson County Feed Products v. Omaha P. P. Dist.*, 174 Neb. 350, 118 N.W.2d 7 (1962).

Provisions of general irrigation act are only incorporated so far as they are applicable. *Halligan v. Elander*, 147 Neb. 709, 25 N.W.2d 13 (1946).

Legislature did not expressly restrict district in nature of title to be taken under eminent domain, but gave it power to take what was necessary for the public use for which the taking was authorized, up to and including the fee. *Burnett v. Central Neb. P. P. & I. Dist.*, 147 Neb. 458, 23 N.W.2d 661 (1946).

In condemning a right-of-way for an irrigation lateral, the benefit accruing to all irrigable land within the irrigation system's area of delivery by reason of the availability of water must be considered as a general benefit, and is not deductible from the consequential damages to land not taken. *Prudential Insurance Company v. Central Nebraska Public Power & Irrigation Dist.*, 139 Neb. 114, 296 N.W. 752 (1941).

Public power districts are governed as to their use and occupation of highways by the statutes relating to irrigation districts so far as they are applicable. *Wright v. Loup River Public Power Dist.*, 133 Neb. 715, 277 N.W. 53 (1938).

In exercising the power of eminent domain to obtain right-of-way over private property, a public power district is not restricted to condemnation along boundary lines. *Johnson v. Platte Valley Public Power & Irrigation Dist.*, 133 Neb. 97, 274 N.W. 386 (1937).

Power of eminent domain is expressly conferred. *State ex rel. Loseke v. Fricke*, 126 Neb. 736, 254 N.W. 409 (1934).

70-668 Streams; water rights; priority.

In applying the provisions of law relating to the appropriation of water, priority of appropriation shall give the better right as between those using the water for the same purpose, but when the waters of any natural stream are not sufficient for the use of all those desiring to use the same, those using the water for domestic purposes shall have preference over those claiming it for any other purpose. Those using the water for agricultural purposes shall have the preference over those using the same for manufacturing purposes, and those using the water for agricultural purposes shall have the preference over those using the same for power purposes, where turbine or impulse water wheels are installed, or for instream-basin-management purposes.

Source: Laws 1933, c. 86, § 7, p. 349; Laws 1941, c. 138, § 1, p. 545; C.S.Supp.,1941, § 70-707; R.S.1943, § 70-668; Laws 2016, LB1038, § 13.

A preferential use is given to waters used for irrigation purposes over waters used for power purposes. *Hickman v. Loup River P. P. Dist.*, 173 Neb. 428, 113 N.W.2d 617 (1962).

70-669 Streams; inferior rights; acquired by superior right; how compensated.

No inferior right to the use of the waters of this state shall be acquired by a superior right without just compensation therefor to the inferior user. The just compensation paid to those using water for power purposes shall not be greater than the cost of replacing the power which would be generated in the plant or plants of the power user by the water so acquired. The just compensation to be paid to a holder of an instream-basin-management appropriation that has been changed from a manufacturing of hydropower appropriation pursuant to section 46-290 shall be the cost per acre-foot of water subordinated for the hydropower appropriation at the time of approval of the change. The amount of compensation may be adjusted annually, except that any increase shall not exceed the annual change in the Consumer Price Index from the time of approval of the change. If publication of such index is discontinued, a comparable index selected by the Director of Natural Resources shall be used.

Source: Laws 1933, c. 86, § 7, p. 349; Laws 1941, c. 138, § 1, p. 545; C.S.Supp.,1941, § 70-707; R.S.1943, § 70-669; Laws 2016, LB1038, § 14.

Right to use of waters for power purposes cannot be acquired by a superior right for irrigation purposes without payment of just compensation. *Hickman v. Loup River P. P. Dist.*, 173 Neb. 428, 113 N.W.2d 617 (1962).

70-670 Eminent domain; procedure; duties of Attorney General; costs; certain property not subject to eminent domain.

(1) In addition to any other rights and powers conferred upon any district organized under or subject to Chapter 70, article 6, each such district shall have and exercise the power of eminent domain to acquire from any person, firm, association, or private corporation any and all property owned, used, or operated, or useful for operation, in the generation, transmission, or distribution of electrical energy, including an existing electric utility system or any part thereof. The procedure to condemn property shall be exercised in the manner set forth in Chapter 76, article 7.

(2) In the case of the acquisition through the exercise of the power of eminent domain of an existing electric utility system or part thereof, the Attorney General shall, upon request of any district, represent such district in the institution and prosecution of condemnation proceedings. After acquisition of an existing electric utility system through the exercise of the power of eminent domain, the district shall reimburse the state for all costs and expenses incurred in the condemnation proceedings by the Attorney General.

(3) A district may agree to limit its exercise of the power of eminent domain to acquire a project which is a renewable energy generation facility producing electricity with wind and any related facilities.

(4) No property owned, used, or operated as part of a privately developed renewable energy generation facility meeting the requirements of section 70-1014.02 shall be subject to eminent domain by any consumer-owned electric supplier operating in the State of Nebraska.

Source: Laws 1933, c. 86, § 7, p. 349; Laws 1941, c. 138, § 1, p. 545; C.S.Supp.,1941, § 70-707; R.S.1943, § 70-670; Laws 1945, c. 157, § 5, p. 519; Laws 1951, c. 101, § 107, p. 497; Laws 1981, LB 181, § 33; Laws 2009, LB561, § 1; Laws 2016, LB824, § 1.

The authority of a public power district to acquire land for purposes outside of section 70-301 is governed by this section. This section refers to a power of eminent domain that is broader than section 70-301. This section permits a public power district to acquire "any and all property" to be utilized in the "generation, transmission, or distribution of electrical energy". *SID No. 1 of Fillmore County v. Nebraska Pub. Power Dist.*, 253 Neb. 917, 573 N.W.2d 460 (1998).

Eminent domain procedure act controls procedure. *Jensen v. Omaha Public Power Dist.*, 159 Neb. 277, 66 N.W.2d 591 (1954).

Public power and irrigation districts have the same powers of eminent domain as irrigation companies. *Burnett v. Central Neb. P. P. & I. Dist.*, 147 Neb. 458, 23 N.W.2d 661 (1946).

Public power and irrigation district has right to exercise power of eminent domain in the acquisition of property. *Snyder v. Platte Valley Public Power & Irr. Dist.*, 144 Neb. 308, 13 N.W.2d 160 (1944).

Districts have power of eminent domain. *State ex rel. Johnson v. Central Neb. P. P. & I. Dist.*, 140 Neb. 471, 300 N.W. 379 (1941).

70-671 District; breaks, overflow, and seepage; liability.

Any such district shall be liable for all breaks, overflow and seepage damage. Damages from seepage shall be recoverable when and if it accrues.

Source: Laws 1933, c. 86, § 7, p. 349; Laws 1941, c. 138, § 1, p. 545; C.S.Supp.,1941, § 70-707; R.S.1943, § 70-671.

1. Damages from seepage
2. Damages from overflow
3. Miscellaneous

1. Damages from seepage

District is liable for seepage escaping from its works when and if it accrues. *Scherz v. Platte Valley Public Power & Irrigation Dist.*, 151 Neb. 415, 37 N.W.2d 721 (1949).

Damages for seepage are recoverable in one action. *Smith v. Platte Valley Public Power & Irrigation Dist.*, 151 Neb. 49, 36 N.W.2d 478 (1949).

This section gives a party damaged by seepage a plain, complete, adequate and speedy remedy at law. *Halligan v. Elander*, 147 Neb. 709, 25 N.W.2d 13 (1946).

Districts are liable for overflow and seepage damages, but agreement to drain lands will not be enforced by mandatory injunction which would result in irreparable damage to third parties. *Halligan v. Elander*, 147 Neb. 156, 22 N.W.2d 647 (1946).

District is liable for damages caused by seepage irrespective of negligence. *Luchsinger v. Loup River Public Power Dist.*, 140 Neb. 179, 299 N.W. 549 (1941).

Landowner is entitled to be compensated for loss of crops growing on land at time land is condemned arising from seepage. *Heiden v. Loup River Public Power Dist.*, 139 Neb. 754, 298 N.W. 736 (1941).

This section makes liability for damages from seepage absolute. *Asche v. Loup River Public Power District*, 138 Neb. 890, 296 N.W. 439 (1941).

2. Damages from overflow

Liability for all overflow is absolute only for such waters as flow over and from or escape out of the reservoirs or canals of a public power district and cause damage. *Robinson v. Central Nebraska Public Power & Irrigation Dist.*, 146 Neb. 534, 20 N.W.2d 509 (1945).

Instruction stating a public power and irrigation district is liable for all overflow damage plaintiff suffered to his crop by such overflow unless such damages were caused by an act of God is not prejudicial error if supported by competent evidence. *Webb v. Platte Valley Public Power & Irrigation District*, 146 Neb. 61, 18 N.W.2d 563 (1945).

3. Miscellaneous

This section applies only to districts organized under this article. *Baum v. County of Scotts Bluff*, 172 Neb. 225, 109 N.W.2d 295 (1961).

70-672 Water rights; eminent domain; condemnation; procedure.

Whenever the directors of an irrigation district vote to acquire and appropriate by the exercise of the power of eminent domain any water being used for power purposes, or whenever any person, firm, association, corporation, or organization seeks to acquire any water being used for power purposes and shall be unable to agree with the user of such water for power purposes upon the compensation to be paid to such power user, the procedure to condemn property shall be exercised in the manner set forth in Chapter 76, article 7.

Source: Laws 1941, c. 138, § 2, p. 546; C.S.Supp.,1941, § 46-515; R.S. 1943, § 70-672; Laws 1951, c. 101, § 108, p. 497; Laws 1981, LB 181, § 34.

An owner of a superior preference right who initiates condemnation proceedings to enforce that right is not barred from also challenging the validity of a power district's appropriation right. *In re 2007 Appropriations of Niobrara River Waters*, 278 Neb. 137, 768 N.W.2d 420 (2009).

Where owner of a superior right seeks to acquire water being used for power purposes, eminent domain proceedings may be utilized. *Hickman v. Loup River P. P. Dist.*, 173 Neb. 428, 113 N.W.2d 617 (1962).

70-673 Competitive or proprietary information; withheld; when; procedures applicable.

(1) Notwithstanding any other provision of law, the public power industry as defined in section 70-601 and the Nebraska Power Review Board may withhold competitive or proprietary information which would give an advantage to business competitors. Competitive information is information which a reasonable person, knowledgeable of the electric utility industry, could conclude gives an advantage to business competitors.

(2) Any request for records described in this section shall be subject to the procedures for public record requests provided in sections 84-712 to 84-712.09.

Source: Laws 2018, LB1008, § 3.
Operative date April 12, 2018.

70-674 Repealed. Laws 1951, c. 101, § 127.

70-675 Repealed. Laws 1951, c. 101, § 127.

70-676 Repealed. Laws 1951, c. 101, § 127.

70-677 Repealed. Laws 1951, c. 101, § 127.

70-678 Repealed. Laws 1951, c. 101, § 127.

70-679 Repealed. Laws 1951, c. 101, § 127.

70-680 Judicial proceedings; bond not required, when.

No bond for costs, appeal, supersedeas, injunction, or attachment shall be required of any district organized under or subject to Chapter 70, article 6, or of any officer, board, head of any department, agent, or employee of such district in any proceeding or court action in which the district or any officer, board, head of department, agent, or employee is a party litigant in its, his, or her official capacity.

Source: Laws 1971, LB 310, § 1; Laws 1981, LB 181, § 35.

This section does not violate Neb. Const., Art. III, section 14, because the law, as passed, was an act complete and independent in itself and its title called attention to the subject matter of the bill. *Aschenbrenner v. Nebraska P. P. Dist.*, 206 Neb. 157, 291 N.W.2d 720 (1980).

70-681 Districts existing on August 30, 2009; director holding office when charter amended; how treated.

In order to provide for orderly compliance with Chapter 70, article 6, districts existing on August 30, 2009, are hereby deemed to be properly constituted and incorporated and their directors duly elected and, notwithstanding any other provision of law, a district shall not be required to amend its charter in order to be in such compliance until six months after the publication of the first federal decennial census published after August 30, 2009. A director holding office at the time of any such amendment to a charter may continue to serve until the expiration of his or her term of office if such director meets the qualifications of section 70-619 for holding office under the charter as so amended.

Source: Laws 1986, LB 949, § 15; Laws 2009, LB53, § 5.

70-682 Generating power agency; authority to engage in commodity futures financial hedging transactions; procedure; limitation.

(1) For purposes of this section:

(a) Generating power agency has the same meaning as in Chapter 70, article 6; and

(b) Regional transmission organization has the same meaning as in section 70-1001.01.

(2) Any generating power agency buying or selling fuel, power, or energy which operates in a regional transmission organization shall be authorized to engage in commodity futures financial hedging transactions with products regulated under the federal Commodity Futures Trading Commission for fuel, power, or energy as part of its sound business practices. Any generating power agency engaged in such transactions is authorized to grant a foreclosable security interest in and a lien on such agency's commodity futures account contracts or funds used for such transactions in an amount not exceeding five percent of such agency's annual gross revenue averaged over the preceding three calendar years.

(3) The authority to enter into agreements for the use of commodity futures financial hedging transactions shall be authorized by a resolution adopted or an agreement approved by the governing body of the generating power agency.

(4) The authority granted in this section is limited to granting a security interest in and a lien on future account contracts or funds specifically designated and used for such commodity futures financial hedging transactions. Except as otherwise authorized under Chapter 70, this section does not authorize granting a foreclosable security interest in or a lien on any other funds, assets, facilities, or property of a generating power agency.

(5) An agreement authorized by this section shall be considered a bond as defined in section 10-1103.

Source: Laws 2016, LB897, § 2.

ARTICLE 7

ELECTRIC COOPERATIVE CORPORATIONS

Section

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- 70-702. Terms, defined.
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- 70-704. Corporate powers.
- 70-705. Who may organize.
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- 70-737. Sections, how construed.
- 70-738. Sections; exclusive; applicability of other law.

70-701 Act, how cited.

Sections 70-701 to 70-738 may be cited as the Electric Cooperative Corporation Act.

Source: Laws 1937, c. 50, § 1, p. 203; C.S.Supp.,1941, § 70-801; R.S. 1943, § 70-701.

70-702 Terms, defined.

For purposes of the Electric Cooperative Corporation Act, unless the context otherwise requires: (1) Corporation means a corporation organized pursuant to the act; (2) board means a board of directors of a corporation organized under the act; (3) member means the incorporators of a corporation and each person thereafter lawfully admitted to membership therein; (4) federal agency includes the United States of America and any department administration, commission, board, bureau, office, establishment, agency, authority, or instrumentality of the United States of America heretofore or hereafter ordered; (5) person includes any natural person, firm, association, corporation, business trust, partnership, limited liability company, federal agency, state, or political subdivision thereof, or any body politic; (6) acquire means and includes construct, acquire by purchase, lease, devise, gift, or other mode of acquisition; (7) obligations include bonds, notes, debentures, interim certificates or receipts, and all other evidences of indebtedness issued by a corporation; and (8) rural area means any area not included within the boundaries of any incorporated city, town, or village.

Source: Laws 1937, c. 50, § 2, p. 203; C.S.Supp.,1941, § 70-802; R.S. 1943, § 70-702; Laws 1993, LB 121, § 416.

70-703 Purpose.

Cooperative, nonprofit, membership corporations may be organized for the purpose of engaging in rural electrification and the furnishing of electric energy to persons in rural areas not served with electrical energy through existing facilities within such rural areas.

Source: Laws 1937, c. 50, § 3, p. 203; C.S.Supp.,1941, § 70-803; R.S. 1943, § 70-703.

70-704 Corporate powers.

Each corporation shall have power: (1) To sue and be sued, complain, and defend, in its corporate name; (2) to have perpetual succession unless a limited period of duration is stated in its articles of incorporation; (3) to adopt a corporate seal, which may be altered at pleasure, and to use it or a facsimile thereof, as required by law; (4) to generate, manufacture, purchase, acquire, and accumulate electric energy and to transmit, distribute, sell, furnish, and dispose of such electric energy; (5) to acquire, own, hold, use, exercise and, to the extent permitted by law, to sell, mortgage, pledge, hypothecate, and in any manner dispose of franchises, rights, privileges, licenses, rights-of-way, and easements necessary, useful, or appropriate; (6) to purchase, receive, lease as lessee, or in any other manner acquire, own, hold, maintain, sell, exchange, and use any and all real and personal property or any interest therein for the purposes expressed herein; (7) to borrow money and otherwise contract indebtedness, to issue its obligations therefor, and to secure the payment thereof by mortgage, pledge, or deed of trust of all or any of its property, assets, franchises, revenue, or income; (8) to sell and convey, mortgage, pledge, lease

as lessor, and otherwise dispose of all or any part of its property and assets; (9) to have the same powers now exercised by law by public light and power districts or private corporations to use any of the streets, highways, or public lands of the state or its political subdivisions in the manner provided by law; (10) to have and exercise the power of eminent domain for the purposes expressed in section 70-703 in the manner set forth in sections 76-704 to 76-724 and to have the powers and be subject to the restrictions of electric light and power corporations and districts as regards the use and occupation of public highways and the manner or method of construction and physical operation of plants, systems, and transmission lines; (11) to accept gifts or grants of money, services, or property, real or personal; (12) to make any and all contracts necessary or convenient for the exercise of the powers granted herein; (13) to fix, regulate, and collect rates, fees, rents, or other charges for electric energy furnished by the corporation; (14) to elect or appoint officers, agents, and employees of the corporation and to define their duties and fix their compensation; (15) to make and alter bylaws not inconsistent with the articles of incorporation or with the laws of this state for the administration and regulation of the affairs of the corporation; (16) to sell or lease its dark fiber pursuant to sections 86-574 to 86-578; and (17) to do and perform, either for itself or its members or for any other corporation organized under the Electric Cooperative Corporation Act or for the members thereof, any and all acts and things and to have and exercise any and all powers as may be necessary, convenient, or appropriate to effectuate the purpose for which the corporation is organized. Notwithstanding any law, ordinance, resolution, or regulation of any political subdivision to the contrary, each corporation may receive funds and extend loans pursuant to the Nebraska Investment Finance Authority Act.

Source: Laws 1937, c. 50, § 4, p. 203; C.S.Supp.,1941, § 70-804; R.S. 1943, § 70-704; Laws 1951, c. 101, § 109, p. 498; Laws 1980, LB 954, § 63; Laws 1987, LB 23, § 2; Laws 2001, LB 827, § 16; Laws 2002, LB 1105, § 478.

Cross References

Nebraska Investment Finance Authority Act, see section 58-201.

70-705 Who may organize.

Any twenty or more natural persons, residents of the territory to be served by the corporation, of the age of twenty-one years or more, residents of this state, may act as incorporators of a corporation to be organized under sections 70-701 to 70-738 by executing articles of incorporation as provided in said sections.

Source: Laws 1937, c. 50, § 5, p. 205; C.S.Supp.,1941, § 70-805; R.S. 1943, § 70-705.

70-706 Articles of incorporation; contents.

The articles of incorporation shall state (1) the name of the corporation, which name shall include the words electric cooperative and the word corporation, incorporated, inc., association or company, and the name shall be such as to not be deceptively similar to any other corporation organized and existing under the laws of this state; (2) the purpose for which the corporation is formed; (3) the names and addresses of the incorporators who shall serve as directors and manage the affairs of the corporation until its first annual

meeting of members, or until their successors are elected and qualify; (4) the number of directors, not less than five, to be elected at the annual meetings of members; (5) the address of its principal office; (6) the period of duration of the corporation, which may be perpetual; (7) the terms and conditions upon which persons shall be admitted to membership and retain membership in the corporation, but, if expressly so stated, the determination of such matter may be reserved to the directors by the bylaws; and (8) any provisions, not inconsistent with law, which the incorporators may choose to insert for the regulation of the business and the conduct of the affairs of the corporation. It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in section 70-704.

Source: Laws 1937, c. 50, § 6, p. 205; C.S.Supp.,1941, § 70-806; R.S. 1943, § 70-706; Laws 2003, LB 464, § 10.

70-707 Electric cooperative; use of term restricted.

The words electric cooperative shall not be used in the corporate name of corporations organized under the laws of this state, or authorized to do business herein, other than those organized pursuant to the provisions of sections 70-701 to 70-738.

Source: Laws 1937, c. 50, § 7, p. 205; C.S.Supp.,1941, § 70-807; R.S. 1943, § 70-707.

70-708 Articles of incorporation; filing; certificate of incorporation; issuance.

The original copy of the articles of incorporation shall be signed by the incorporators, and acknowledged before any officer authorized by the law of this state to acknowledge the execution of deeds and conveyances. It shall be filed in the office of the Secretary of State. If the Secretary of State finds that the articles of incorporation conform to law, he shall, when the fees prescribed by section 70-733 have been paid, (1) endorse on the original copy the word filed, and the month, day and year of the filing thereof; (2) file the original in his office; and (3) issue a certificate of incorporation to the incorporators. The incorporators shall file for recording a true copy of the articles of incorporation in the office of the county clerk in the county in which the principal office of the corporation in this state is located.

Source: Laws 1937, c. 50, § 8, p. 206; C.S.Supp.,1941, § 70-808; R.S. 1943, § 70-708.

70-709 Certificate of incorporation; effect.

Upon the filing of articles of incorporation with the Secretary of State, the corporate existence of the corporation shall begin. The certificate of incorporation shall be conclusive evidence, except as against the state, that all conditions precedent required to be performed by the incorporators have been complied with, and that the corporation has been incorporated.

Source: Laws 1937, c. 50, § 9, p. 206; C.S.Supp.,1941, § 70-809; R.S. 1943, § 70-709.

70-710 Organizational meeting; bylaws; adoption; election of officers; notice; waiver.

After the issuance of the certificate of incorporation an organization meeting shall be held, at the call of a majority of the incorporators, for the purpose of adopting bylaws and electing officers, and for the transaction of such other business as may properly come before the meeting. The incorporators calling the meeting shall give at least three days' notice thereof by mail to each incorporator, which notice shall state the time and place of the meeting, but such notice may be waived in writing.

Source: Laws 1937, c. 50, § 10, p. 206; C.S.Supp.,1941, § 70-810; R.S. 1943, § 70-710.

70-711 Bylaws; make, alter, amend, or repeal; contents.

The power to make, alter, amend or repeal the bylaws of the corporation shall be vested in the board of directors. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

Source: Laws 1937, c. 50, § 11, p. 206; C.S.Supp.,1941, § 70-811; R.S. 1943, § 70-711.

70-712 Membership; conditions.

All persons in rural areas proposed to be served by a corporation shall be eligible to membership in a corporation. No person shall become, be or remain a member of a corporation unless such person shall use or agree to use electric energy furnished by the corporation. A corporation organized under sections 70-701 to 70-738 may become a member of another corporation, and may avail itself fully of the facilities and services thereof.

Source: Laws 1937, c. 50, § 12, p. 207; C.S.Supp.,1941, § 70-812; R.S. 1943, § 70-712.

70-713 Meetings, where held; annual and special meetings.

Meetings of members may be held at such place as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held in the principal office of the corporation in this state. An annual meeting of the members shall be held at such time as may be provided in the bylaws. Failure to hold the annual meeting at the designated time shall not work forfeiture or dissolution of the corporation. Special meetings of the members may be called by the president, by the board of directors, by a petition signed by not less than one-tenth of all the members, or by such other officers or persons as may be provided in the articles of incorporation or the bylaws.

Source: Laws 1937, c. 50, § 13, p. 207; C.S.Supp.,1941, § 70-813; R.S. 1943, § 70-713.

70-714 Meetings; notice; waiver.

Written or printed notice stating the place, day and hour of the meeting of members and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than three nor more than five days before the date of the meeting, either personally or by mail, by or at the direction of the president or the secretary, or the officers or persons calling the meeting, to each member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the

United States mails in a sealed envelope addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid. Notice of meetings of members may be waived in writing.

Source: Laws 1937, c. 50, § 14, p. 207; C.S.Supp.,1941, § 70-814; R.S. 1943, § 70-714.

70-715 Members; voting rights.

Each member present shall be entitled to one, and only one, vote on each matter submitted to a vote at a meeting of members.

Source: Laws 1937, c. 50, § 15, p. 208; C.S.Supp.,1941, § 70-815; R.S. 1943, § 70-715.

70-716 Membership certificate; issuance; transfer; conditions.

When a member of a corporation has paid the membership fee in full, a certificate of membership shall be issued to such member. After such membership fee has been paid in full, memberships and certificates in the corporation shall be transferable upon the books of the corporation to other persons eligible for membership in such corporation; *Provided*, that, five days before the transfer thereof, such membership, and certificate, has been offered for redemption to the corporation at its book value and such corporation has refused to purchase the same.

Source: Laws 1937, c. 50, § 16, p. 208; C.S.Supp.,1941, § 70-816; R.S. 1943, § 70-716.

70-717 Meetings; quorum.

Unless otherwise provided in the articles of incorporation, a majority of the members present in person shall constitute a quorum for the transaction of business at a meeting of members.

Source: Laws 1937, c. 50, § 17, p. 208; C.S.Supp.,1941, § 70-817; R.S. 1943, § 70-717.

70-718 Board of directors; number; powers; qualifications.

The business and affairs of a corporation shall be managed by a board of directors, not less than five in number, which shall exercise all the powers of the corporation except such as are conferred upon the members by sections 70-701 to 70-738, by the articles of incorporation, or by the bylaws of the corporation. The bylaws may prescribe qualifications for directors.

Source: Laws 1937, c. 50, § 18, p. 208; C.S.Supp.,1941, § 70-818; R.S. 1943, § 70-718.

70-719 Directors; alternate directors; compensation; election.

The directors, other than those named in the certificate of incorporation to serve until the first annual meeting of members, shall be elected annually, or as otherwise provided in the bylaws, by the members. The directors shall be members of the corporation and shall be entitled to such compensation and reimbursement for expenses actually and necessarily incurred by them as provided in sections 81-1174 to 81-1177 for state employees. The bylaws may provide for the election of alternate directors, who shall be elected and serve in the same manner as members elected to the board of directors. Such alternate

directors shall serve in the event of the absence, disability, disqualification, or death of an elected director.

Source: Laws 1937, c. 50, § 19, p. 208; C.S.Supp.,1941, § 70-819; R.S. 1943, § 70-719; Laws 1974, LB 833, § 1; Laws 1981, LB 204, § 106.

70-720 Directors; alternate directors; vacancy; how filled.

Any vacancy occurring in the board or in the position of alternate director, and any directorship to be filled, shall be filled as provided in the bylaws by persons who shall serve until directors or alternate directors may be regularly elected as provided for in section 70-719.

Source: Laws 1937, c. 50, § 20, p. 208; C.S.Supp.,1941, § 70-820; R.S. 1943, § 70-720; Laws 1974, LB 833, § 2.

70-721 Board of directors; quorum; how determined.

A majority of the board shall constitute a quorum for the transaction of business, unless a greater number is required by the articles of incorporation or the bylaws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board, unless the act of a greater number is required by the articles of incorporation or the bylaws. For the purpose of determining a quorum, alternate directors shall be considered in the event of the absence, disability, disqualification, or death of any director.

Source: Laws 1937, c. 50, § 21, p. 209; C.S.Supp.,1941, § 70-821; R.S. 1943, § 70-721; Laws 1974, LB 833, § 3.

70-722 Board meetings; notice; waiver.

Meetings of the board, regular or special, shall be held at such place and upon such notice as the bylaws may prescribe. Attendance of a director or alternate director at any meeting shall constitute a waiver of notice of such meeting, except where a director or alternate director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting.

Source: Laws 1937, c. 50, § 22, p. 209; C.S.Supp.,1941, § 70-822; R.S. 1943, § 70-722; Laws 1974, LB 833, § 4.

70-723 Officers; powers; duties; removal.

The board shall elect from its number a president, a vice president, a secretary, and a treasurer, but the same person may be elected to the office of secretary and treasurer. The powers and duties of the foregoing officers, as well as their terms of office and compensation, shall be provided for in the bylaws. The board shall appoint such other officers, agents and employees as it deems necessary, and fix their powers, duties and compensation. Any officer, agent or employee, elected or appointed by the board, may be removed by it whenever in its judgment the best interests of the corporation will be served.

Source: Laws 1937, c. 50, § 23, p. 209; C.S.Supp.,1941, § 70-823; R.S. 1943, § 70-723.

70-724 Executive committee; powers.

Any corporation may, by its bylaws, provide for an executive committee to be elected from and by its board of directors. To such committee may be delegated the management of the current and ordinary business of the corporation, and such other duties as the bylaws may prescribe, but the designation of such committee, and the delegation thereto of authority, shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed upon it or him by sections 70-701 to 70-738.

Source: Laws 1937, c. 50, § 24, p. 209; C.S.Supp.,1941, § 70-824; R.S. 1943, § 70-724.

70-725 Rates for electric energy and other services; nonprofit operation.

Each corporation shall be operated without profit to its members, but the rates, fees, rents, or other charges, for electric energy, and any other facilities, supplies, equipment, appliances or services furnished by the corporation, shall be sufficient at all times (1) to pay all operating and maintenance expenses necessary or desirable for the prudent conduct of its business, and the principal of and interest on the obligations issued or assumed by the corporation in the performance of the purpose for which it was organized, and (2) for the creation of reserves.

Source: Laws 1937, c. 50, § 25, p. 210; C.S.Supp.,1941, § 70-825; R.S. 1943, § 70-725.

70-726 Revenue; use; surplus; return to consumer.

The revenue of the corporation shall be devoted, first, to the payment of operating and maintenance expenses and the principal and interest on outstanding obligations, and thereafter to such reserves for improvement, new construction, depreciation and contingencies, as the board may from time to time prescribe. Revenue not required for the purposes set forth in this section shall be returned from time to time to the users of the services or products of such corporation on a pro rata basis according to the amount of business done with each during the period, either in cash, in abatement of current charges for electric energy, or otherwise, as the board determines; but such return may be made by way of general rate reduction to such users, if the board so elects.

Source: Laws 1937, c. 50, § 25, p. 210; C.S.Supp.,1941, § 70-825; R.S. 1943, § 70-726.

70-727 Articles of incorporation; amendment; procedure.

A corporation may amend its articles of incorporation by a majority vote of the members present in person at any regular meeting, or at any special meeting of its members called for that purpose. The power to amend shall include the power to accomplish any desired change in the provisions of its articles of incorporation, and to include any purpose, power or provision which would be authorized to be included in original articles of incorporation if executed at the time the amendment is made. Articles of amendment signed by the president or vice president, and attested by the secretary, certifying to such amendment and its lawful adoption, shall be executed, acknowledged, filed and recorded in the same manner as the original articles of incorporation of a corporation organized under sections 70-701 to 70-738. As soon as the Secre-

tary of State shall have accepted the articles of amendment for filing and recording, and issued a certificate of amendment, the amendment or amendments shall be in effect.

Source: Laws 1937, c. 50, § 26, p. 210; C.S.Supp.,1941, § 70-826; R.S. 1943, § 70-727.

70-728 Consolidation of corporations; how effected.

Any two or more corporations may enter into an agreement for the consolidation of such corporations. The agreement shall set forth the terms and conditions of the consolidation, the name of the proposed consolidated corporation, the number of its directors, not less than five, the time of the annual meeting and election, and the names of at least five persons to be directors until the first annual meeting. If such agreement is approved by the votes of a majority of the members of each corporation present in person at any regular meeting, or at any special meeting of its members called for that purpose, the directors named in the agreement shall sign and acknowledge, as incorporators, articles of consolidation conforming substantially to original articles of incorporation of a corporation organized under sections 70-701 to 70-738.

Source: Laws 1937, c. 50, § 27, p. 211; C.S.Supp.,1941, § 70-827; R.S. 1943, § 70-728.

70-729 Articles of consolidation; filing.

The articles of consolidation shall be executed, acknowledged, filed and recorded in the same manner as the original articles of incorporation of a corporation organized under sections 70-701 to 70-738. As soon as the Secretary of State shall have accepted the articles of consolidation for filing and recording, and issued a certificate of consolidation, the proposed consolidated corporation, described in the articles under its designated name, shall be a body corporate with all of the powers of a corporation as originally organized hereunder.

Source: Laws 1937, c. 50, § 27, p. 211; C.S.Supp.,1941, § 70-827; R.S. 1943, § 70-729.

70-730 Dissolution; procedure.

Any corporation may dissolve by a majority vote of the members in person at any regular meeting, or at any special meeting of its members called for that purpose. A certificate of dissolution shall be signed by the president or vice president, and attested by the secretary, certifying to such dissolution, and stating that they have been authorized to execute and file such certificate by votes cast in person by a majority of the members of the corporation. A certificate of dissolution shall be executed, acknowledged, filed and recorded in the same manner as the original articles of incorporation of a corporation organized under sections 70-701 to 70-738, and as soon as the Secretary of State shall have accepted the certificate of dissolution for filing and recording, and issued a certificate of dissolution, the corporation shall be deemed to be dissolved.

Source: Laws 1937, c. 50, § 28, p. 211; C.S.Supp.,1941, § 70-828; R.S. 1943, § 70-730.

70-731 Dissolution; discharge of liabilities; distribution of assets.

Such corporation shall continue for the purpose of paying, satisfying and discharging any existing liabilities or obligations, and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name. Any assets remaining, after all liabilities or obligations of the corporation have been satisfied or discharged, shall be distributed pro rata among the members of the corporation at the time of the filing of the certificate of dissolution.

Source: Laws 1937, c. 50, § 28, p. 211; C.S.Supp.,1941, § 70-828; R.S. 1943, § 70-731.

70-732 Defective corporations; dissolution; procedure.

Any corporation which purports to have been incorporated or reincorporated under sections 70-701 to 70-738, but which has not complied with all of the requirements for legal corporate existence, may nevertheless file a certificate of dissolution in the same manner as a validly existing corporation. The certificate of dissolution in such case may be authorized by a majority of the incorporators or directors at a meeting called by any incorporator upon ten days' notice mailed to the last-known post office address of each incorporator or director, and held at the principal office of the corporation named in the articles of incorporation.

Source: Laws 1937, c. 50, § 28, p. 211; C.S.Supp.,1941, § 70-828; R.S. 1943, § 70-732.

70-733 Filing fees.

The Secretary of State shall charge and collect for (1) filing articles of incorporation and issuing a certificate of incorporation, three dollars; (2) filing of articles of amendment and issuing a certificate of amendment, two dollars; (3) filing articles of consolidation and issuing a certificate with respect thereto, ten dollars; and (4) filing articles of dissolution, five dollars.

Source: Laws 1937, c. 50, § 29, p. 212; C.S.Supp.,1941, § 70-829; R.S. 1943, § 70-733.

70-734 Securities Act of Nebraska; inapplicable; when.

Whenever any corporation organized under the Electric Cooperative Corporation Act has borrowed money from any federal agency, the obligations issued to secure the payment of such money shall be exempt from the provisions of the Securities Act of Nebraska, and the act shall not apply to the issuance of membership certificates.

Source: Laws 1937, c. 50, § 30, p. 212; C.S.Supp.,1941, § 70-830; R.S. 1943, § 70-734; Laws 1967, c. 424, § 1, p. 1300; Laws 1998, LB 894, § 7.

Cross References

Securities Act of Nebraska, see section 8-1123.

70-735 Defective incorporation; correction; effect.

In the event any corporation has filed defective articles of incorporation, or has failed to do all things necessary to perfect its corporate organization, it may, nevertheless, file corrected articles of incorporation or amend the original articles, and do and perform all acts and things necessary in the premises for

the correction of such defects. The action so taken shall be valid and binding upon all persons concerned, and the capacity of such corporation to file corrected articles of incorporation or amendments to the original articles, or to do and perform all acts and things necessary in the premises, shall not be questioned.

Source: Laws 1937, c. 50, § 31, p. 213; C.S.Supp.,1941, § 70-831; R.S. 1943, § 70-735.

70-736 Existing associations; compliance with sections.

Any existing cooperative or nonprofit corporation or association, organized under any other law of this state for the purpose of engaging in rural electrification, may, by a majority vote of the members present in person at a meeting called for that purpose, amend its articles of incorporation so as to comply with sections 70-701 to 70-738.

Source: Laws 1937, c. 50, § 32, p. 213; C.S.Supp.,1941, § 70-832; R.S. 1943, § 70-736.

70-737 Sections, how construed.

Sections 70-701 to 70-738 shall be construed liberally. The enumeration of any object, purpose, power, manner, method or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods or things.

Source: Laws 1937, c. 50, § 33, p. 213; C.S.Supp.,1941, § 70-833; R.S. 1943, § 70-737.

70-738 Sections; exclusive; applicability of other law.

Sections 70-701 to 70-738 are complete in themselves, and shall be controlling. The provisions of any other law of this state, except as provided in said sections, shall not apply to a corporation organized under said sections.

Source: Laws 1937, c. 50, § 35, p. 213; C.S.Supp.,1941, § 70-835; R.S. 1943, § 70-738.

ARTICLE 8

RURAL POWER DISTRICTS

Section

- 70-801. District; how created.
- 70-802. Terms, defined.
- 70-803. Formation of district; petition; contents.
- 70-804. Formation of district; petition; investigation; hearing; notice; expenses.
- 70-805. Formation of district; petition; hearing; approval; procedure.
- 70-806. Formation of district; petitioner; appeal; procedure.
- 70-807. Formation of district; petition granted; interested person; appeal; procedure.
- 70-808. Sections, how construed.
- 70-809. Audit.

70-801 District; how created.

Independently of, and in addition to any and all other means or methods provided by the laws of this state for the creation of public power districts, such districts may also be created in the method and manner in sections 70-801 to 70-808 provided.

Source: Laws 1949, c. 196, § 1, p. 571.

70-802 Terms, defined.

As used in Chapter 70, article 8, unless the context otherwise requires:

- (1) Board means the Nebraska Power Review Board;
- (2) The terms public power district and district as used in Chapter 70, article 8, each mean the same and also have the same meaning as the term public power district as applied to public corporations created under Chapter 70, article 6, and amendments thereof;
- (3) Petitioner means the corporation or association which presents a petition to the Nebraska Power Review Board for the creation of a public power district pursuant to Chapter 70, article 8;
- (4) Electric utility means the business of conducting or carrying on, in service to the public, any one or more of the functions or operations of generation, transmission, distribution, sale, and purchase of electrical energy, hydrogen, or ethanol for purposes of lighting, power, heating, and any and every other useful purpose whatsoever, and any and all plants, lines, systems, and any and all other property owned, used, operated, or useful for such operation;
- (5) Electric cooperative corporation means a corporation organized under Chapter 70, article 7; and
- (6) Rural area means any area not included within the boundaries of any incorporated city or village.

Source: Laws 1949, c. 196, § 2, p. 571; Laws 1981, LB 181, § 36; Laws 1986, LB 1230, § 50; Laws 2005, LB 139, § 18.

70-803 Formation of district; petition; contents.

Any electric cooperative corporation, whether organized or incorporated under the laws of this state or of any other state, which shall own and operate within this state any electric utility engaged in furnishing electric energy to customers in a rural area, may file in the office of the Nebraska Power Review Board a petition for the creation of a public power district, which petition must state and contain:

- (1) The name of the proposed district, incorporating in each name the words public power district;
- (2) The location of the principal place of business of the proposed district;
- (3) The names of the municipalities within the proposed district and the boundaries thereof, including within the same, but not limited to all municipalities served by the petitioner in its electric utility business;
- (4) A general description of the nature of the business in which the proposed district is to engage, the location and method of operation of the electric utility both theretofore operated by the petitioner and as proposed for the district when created;
- (5) A statement that the proposed district shall not have the power to levy taxes nor to issue bonds which shall be general obligations of the district;
- (6) The names and the addresses of the members of the board of directors of the district, which board shall consist of not less than five nor more than twenty-one members, except where the district comprises or proposes to operate in more than fifty counties in the state in which case the number shall be seven, who shall serve until their successors are elected and qualified as provided for in Chapter 70, article 8; the directors named shall be divided as

nearly as possible into three equal groups, (a) the members of the first group to hold office until their successors elected at the first general state election thereafter shall have qualified, (b) the members of the second group to hold office until their successors elected at the second general state election thereafter shall have qualified, and (c) the members of the third group to hold office until their successors elected at the third general state election thereafter shall have qualified; and after the name of each director, it shall state to which of the three groups he or she belongs;

(7) A statement in substance that the proposed district when created pursuant to the provisions of Chapter 70, article 8, shall be a public power district subject to and governed by the provisions of Chapter 70, article 6, and all other provisions of law, insofar as the same are applicable to public power districts in this state after their creation; and

(8) Duly certified copies of documents and records of proceedings preceding the filing of the petition which must include and show the following: (a) Due authorization of and an irrevocable covenant for the complete dissolution of the corporate existence of the petitioner, such dissolution to be effective when, as, and if the petition is approved and the proposed district created; (b) due authorization of and irrevocable covenant for the absolute assignment, transfer, grant, deed, and conveyance of all of the property and assets of the petitioner to the district when, as, and if the petition is approved and the district created, including an itemized and detailed description of all of said property and assets, the location thereof, and the exact nature and amount of the consideration and terms of each such assignment, transfer, grant, deed, and conveyance, and further including the names and addresses of the officers of the petitioner authorized to execute, acknowledge, and deliver any and all instruments and documents necessary or proper to fully consummate said transaction; and (c) duly certified copies of resolutions of the stockholders or members of the petitioner authorizing the execution and filing of the petition and the prosecution of the same to conclusion.

Source: Laws 1949, c. 196, § 3, p. 572; Laws 1981, LB 181, § 37.

70-804 Formation of district; petition; investigation; hearing; notice; expenses.

Upon receipt of such petition the board shall immediately make an investigation of the proposed district, of all matters set forth in the petition, and, as the board may deem necessary or proper, of any other facts and circumstances surrounding the existing business and operation of the petitioner, its proposed dissolution and transfer of its assets to the district. The board shall also conduct a public hearing upon such petition after publishing a notice of the time and place of such hearing for three consecutive weeks in any legal newspaper widely circulated in the territory comprising the proposed district. The petitioner shall pay the necessary expenses incurred by the board in making investigations and conducting hearings pursuant to the provisions of Chapter 70, article 8.

Source: Laws 1949, c. 196, § 4, p. 574; Laws 1981, LB 181, § 38.

70-805 Formation of district; petition; hearing; approval; procedure.

At such public hearing any interested person, firm, association, or corporation may appear and present evidence or argument in support of or opposition

to such petition. After such hearing and such independent investigation as may be deemed advisable, if the board finds that the proposed district and its proposed operation of an electric utility are feasible and conform to public convenience and welfare, the board shall thereupon and without delay issue a certificate in duplicate, setting forth a true copy of the petition and declaring that the petition has been approved. The board shall cause said certificate to be filed as provided in section 70-608, and thereupon such district under its designated name shall be and constitute a body politic and corporate and thenceforth shall be a public power district governed by all provisions of Chapter 70, article 6, and of other pertinent statutes, insofar as the same pertain to public power districts after their creation.

Source: Laws 1949, c. 196, § 5, p. 574; Laws 1981, LB 181, § 39.

70-806 Formation of district; petitioner; appeal; procedure.

The petitioner may appeal from the decision of the board dismissing the petitioner's petition, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1949, c. 196, § 6(1), p. 575; Laws 1981, LB 181, § 40; Laws 1988, LB 352, § 111.

Cross References

Administrative Procedure Act, see section 84-920.

70-807 Formation of district; petition granted; interested person; appeal; procedure.

Any interested person, firm, or corporation may likewise appeal from a decision of the board granting the petition, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1949, c. 196, § 6(2), p. 575; Laws 1981, LB 181, § 41; Laws 1988, LB 352, § 112.

Cross References

Administrative Procedure Act, see section 84-920.

70-808 Sections, how construed.

Sections 70-801 to 70-808 are and shall be construed to be cumulative, independent legislation, and complete in themselves.

Source: Laws 1949, c. 196, § 7, p. 576.

70-809 Audit.

The audit of any rural power district organized pursuant to Chapter 70, article 8, shall be conducted in the manner prescribed in section 84-304.01.

Source: Laws 1993, LB 310, § 11.

ARTICLE 9

PUBLIC POWER INDUSTRY

Section

- 70-901. Expiration of act.
- 70-902. Expiration of act.
- 70-903. Expiration of act.

Section

- 70-904. Expiration of act.
- 70-905. Expiration of act.
- 70-906. Repealed. Laws 1996, LB 890, § 1.
- 70-907. Repealed. Laws 1996, LB 890, § 1.

70-901 Expiration of act.**70-902 Expiration of act.****70-903 Expiration of act.****70-904 Expiration of act.****70-905 Expiration of act.****70-906 Repealed. Laws 1996, LB 890, § 1.****70-907 Repealed. Laws 1996, LB 890, § 1.****ARTICLE 10****NEBRASKA POWER REVIEW BOARD**

Section

- 70-1001. Declaration of policy.
- 70-1001.01. Terms, defined.
- 70-1002. Suppliers of electricity; agreements; specify service areas; submission to board; purpose of section.
- 70-1002.01. Suppliers of electricity; agreements; wholesale electric energy; submission to board; considerations; investigation; approval; effect.
- 70-1002.02. Suppliers of electricity; sale in violation of approved agreement; prohibited.
- 70-1002.03. New transmission facilities or interconnection; agreement by affected parties; disputes submitted to board; insure prudent utility practice; rate determination; effect.
- 70-1002.04. Municipalities; joint operation of electric systems; register with board; reports; action subject to review or approval.
- 70-1003. Nebraska Power Review Board; establishment; composition; appointment; term; vacancy; qualifications; compensation; expenses; jurisdiction; officers; executive director; staff; reports.
- 70-1004. Suppliers of electricity; filing of maps and service area statements; exception.
- 70-1005. Suppliers of electricity; service area; application to establish; notice of hearing; exception.
- 70-1006. Hearings; continuance; rules of procedure.
- 70-1007. Establishment of service areas; board; orders; policy considerations.
- 70-1008. Certified service areas; established; municipalities; newly annexed areas; acquisition of facilities and customers; procedure; waiver of right to acquire; joint planning.
- 70-1009. Certified service areas; modification; application; transfer of facilities and customers; considerations; impairment of rights prohibited.
- 70-1010. Modification of service areas; application; procedure; suppliers agreements; exception; transfer of customers and facilities; price; how computed; impairment of obligations prohibited.
- 70-1011. Suppliers; service outside area; application for approval; when granted; applicability of section.
- 70-1012. Electric generation facilities and transmission lines; construction or acquisition; application; approval; when not required.
- 70-1012.01. Suppliers; electric generation and transmission facilities; terminate construction or acquisition; filing; reasons; hearing; effect; section, how construed.

§ 70-1001**POWER DISTRICTS AND CORPORATIONS**

Section

- 70-1012.02. Repealed. Laws 1984, LB 729, § 2.
- 70-1013. Electric generation facilities and transmission lines; application; hearing; waiver; appearances; objections; amendments.
- 70-1014. Electric generation facilities and transmission lines; approval or denial of application; findings required; regional line or facilities; additional consideration.
- 70-1014.01. Special generation application; approval; findings required; eminent domain.
- 70-1014.02. Privately developed renewable energy generation facility; owner; duties; certification; decommissioning plan; bond; joint transmission development agreement; contents; property not subject to eminent domain.
- 70-1015. Suppliers; electric generation facilities and transmission lines; unauthorized construction, acquisition, or service; injunction; violation; actions authorized; private electric supplier; commencement of construction prior to providing notice; violation; fine; executive director; powers and duties; dispute; hearing; procedure; decision; costs.
- 70-1016. Appeals; procedure.
- 70-1017. Suppliers; duty to furnish service; disputes submitted to board.
- 70-1018. Suppliers; disputes over rates; submission to board; hearing; recommendations.
- 70-1019. Board; proceedings; compel attendance of witnesses and production of documents; contempt proceedings authorized.
- 70-1020. Board; expenses; assessments levied against suppliers; apportionment; collection; interest; Nebraska Power Review Fund; created; investment.
- 70-1021. Microwave communication facilities; authorization; procedure; protest; hearing; when.
- 70-1022. Microwave facilities or system; authorization; when not required.
- 70-1023. Transferred to section 70-1001.01.
- 70-1024. Power supply plan; board; powers and duties; special assessment.
- 70-1025. Power supply plan; contents; filing; annual report.
- 70-1026. Power supply plan; research and conservation report; contents.
- 70-1027. Power supply plan; research and conservation report; board; include data in biennial report; hearing.
- 70-1028. Electric transmission line approved for construction in regional transmission organization transmission plan; notice to board; failure to provide notice; effect.
- 70-1029. Legislative intent.
- 70-1030. Policy of state.
- 70-1031. Purposes of study.
- 70-1032. Working group; members.
- 70-1033. Nebraska Power Review Board; duties.

70-1001 Declaration of policy.

In order to provide the citizens of the state with adequate electric service at as low overall cost as possible, consistent with sound business practices, it is the policy of this state to avoid and eliminate conflict and competition between public power districts, public power and irrigation districts, individual municipalities, registered groups of municipalities, electric membership associations, and cooperatives in furnishing electric energy to retail and wholesale customers, to avoid and eliminate the duplication of facilities and resources which result therefrom, and to facilitate the settlement of rate disputes between suppliers of electricity.

It is also the policy of the state to prepare for an evolving retail electricity market if certain conditions are met which indicate that retail competition is in the best interests of the citizens of the state. The determination on the timing

and form of competitive markets is a matter properly left to the states as each state must evaluate the costs and benefits of a competitive retail market based on its own unique conditions. Consequently, there is a need for the state to monitor whether the conditions necessary for its citizens to benefit from retail competition exist.

It is also the policy of the state to encourage and allow opportunities for private developers to develop, own, and operate renewable energy facilities intended for sale at wholesale under a statutory framework which protects the ratepayers of consumer-owned utility systems operating in the state from subsidizing the costs of such export facilities through their rates.

Source: Laws 1963, c. 397, § 1, p. 1259; Laws 1971, LB 349, § 4; Laws 1981, LB 181, § 42; Laws 2000, LB 901, § 6; Laws 2010, LB1048, § 2; Laws 2016, LB824, § 2.

Public policy underlying encouragement of publicly owned electric utilities is to provide power to consumers at reasonable rates at as low overall cost as possible and to avoid duplication of facilities. Nebraska P. P. Dist. v. City of York, 212 Neb. 747, 326 N.W.2d 22 (1982).

Before any electric generation facilities may be constructed, an application must be filed with the board, a hearing held at which any interested party may appear, and approval by the board obtained. Omaha P. P. Dist. v. Nebraska P. P. Project, 196 Neb. 477, 243 N.W.2d 770 (1976).

The 1971 amendment extended the policy of the act to wholesale as well as retail sales of electrical energy. City of Lincoln v. Nebraska P. P. Dist., 191 Neb. 556, 216 N.W.2d 722 (1974).

Public policy of state with regard to electrical service stated. Cornhusker P. P. Dist. v. Loup River P. P. Dist., 184 Neb. 789, 172 N.W.2d 235 (1969).

Legislature authorized board on notice and hearing to establish service areas in the event of nonagreement. City of Gering v. Gering Valley Rural P. P. Dist., 180 Neb. 241, 142 N.W.2d 155 (1966).

The article, of which this section is a part, is constitutional. City of Auburn v. Eastern Nebraska Public Power Dist., 179 Neb. 439, 138 N.W.2d 629 (1965).

70-1001.01 Terms, defined.

For purposes of sections 70-1001 to 70-1028, unless the context otherwise requires:

- (1) Board means the Nebraska Power Review Board;
- (2) Electric suppliers or suppliers of electricity means any legal entity supplying, producing, or distributing electricity within the state for sale at wholesale or retail;
- (3) Private electric supplier means an electric supplier producing electricity from a privately developed renewable energy generation facility that is not a public power district, a public power and irrigation district, a municipality, a registered group of municipalities, an electric cooperative, an electric membership association, any other governmental entity, or any combination thereof;
- (4) Privately developed renewable energy generation facility means a facility that (a) generates electricity using solar, wind, geothermal, biomass, landfill gas, or biogas, including all electrically connected equipment used to produce, collect, and store the facility output up to and including the transformer that steps up the voltage to sixty thousand volts or greater, and including supporting structures, buildings, and roads, unless otherwise agreed to in a joint transmission development agreement, (b) is developed, constructed, and owned, in whole or in part, by one or more private electric suppliers, and (c) is not wholly owned by a public power district, a public power and irrigation district, a municipality, a registered group of municipalities, an electric cooperative, an electric membership association, any other governmental entity, or any combination thereof;
- (5) Regional transmission organization means an entity independent from those entities generating or marketing electricity at wholesale or retail, which

has operational control over the electric transmission lines in a designated geographic area in order to reduce constraints in the flow of electricity and ensure that all power suppliers have open access to transmission lines for the transmission of electricity;

(6) Representative organization means an organization designated by the board and organized for the purpose of providing joint planning and encouraging maximum cooperation and coordination among electric suppliers. Such organization shall represent electric suppliers owning a combined electric generation plant capacity of at least ninety percent of the total electric generation plant capacity constructed and in operation within the state;

(7) State means the State of Nebraska; and

(8) Unbundled retail rates means the separation of utility bills into the individual price components for which an electric supplier charges its retail customers, including, but not limited to, the separate charges for the generation, transmission, and distribution of electricity.

Source: Laws 1981, LB 302, § 1; R.S.1943, (1996), § 70-1023; Laws 2000, LB 901, § 7; Laws 2003, LB 65, § 1; Laws 2010, LB1048, § 3; Laws 2011, LB208, § 1; Laws 2016, LB824, § 3.

70-1002 Suppliers of electricity; agreements; specify service areas; submission to board; purpose of section.

(1) All suppliers of electricity, including public power districts, public power and irrigation districts, individual municipalities, registered groups of municipalities, electric membership associations, and cooperatives, serving customers at retail in adjoining service areas shall have the authority to enter into written agreements with each other specifying either the service area or customers each shall serve with electric energy. Before such agreements shall be effective, except agreements referred to in subsection (2) of this section, they shall be submitted to and approved by the Nebraska Power Review Board created by section 70-1003. In the event that such suppliers fail to consummate such agreements, except agreements referred to in subsection (2) of this section, the matter shall be referred to the Nebraska Power Review Board created by section 70-1003.

(2) When two or more suppliers serve the same municipality at retail, such agreements shall specify the service areas within such municipality which each supplier is to serve.

(3) It is declared to be the purpose of this section to promote and encourage the making of such agreements. Such agreements may be amended by the parties thereto at any time, and, except agreements referred to in subsection (2) of this section, shall require the approval of the Nebraska Power Review Board, and they shall be submitted to the board for amendment before the transfer of ownership or control of the facilities serving a service area.

Source: Laws 1963, c. 397, § 2, p. 1259; Laws 1981, LB 181, § 43.

Realignment agreement cannot confer greater rights on one than was possessed by other. *Cornhusker P. P. Dist. v. Loup River P. P. Dist.*, 184 Neb. 789, 172 N.W.2d 235 (1969).

Suppliers of electricity were required to enter into agreement specifying their service areas. *City of Schuyler v. Cornhusker P. P. Dist.*, 181 Neb. 704, 150 N.W.2d 588 (1967).

70-1002.01 Suppliers of electricity; agreements; wholesale electric energy; submission to board; considerations; investigation; approval; effect.

All suppliers of electricity, including public power districts, public power and irrigation districts, individual municipalities, registered groups of municipali-

ties, electric membership associations, and cooperatives, shall have authority to enter into written agreements with each other limiting the areas in which or the customers to which a party to the agreement shall provide or sell electric energy at wholesale. Wholesale electric energy is hereby defined as electric energy which is sold to another agency for resale to the ultimate user, hereafter referred to as the retail customer. Before such agreements shall become effective, they shall be submitted to and approved by the Nebraska Power Review Board created by section 70-1003. It is declared to be the purpose of this section to promote and encourage the making of such agreements. Such agreements may be amended by the parties thereto at any time, and such amendments shall require the prior approval of the Nebraska Power Review Board. When requested to approve such an agreement or amendment thereto, the Nebraska Power Review Board shall consider whether or not the proposed agreement or amendment can be reasonably expected to provide a reliable wholesale power supply at a reasonable cost for the area covered by the agreement. It may make such investigation as it determines is necessary and hold a hearing if it determines one to be desirable. At the conclusion of its investigation, the Nebraska Power Review Board shall approve the agreement or amendment unless it determines that it cannot be reasonably expected to provide a reliable wholesale power supply at a reasonable cost for the area covered. Such agreements when approved by the Nebraska Power Review Board shall not be binding upon other suppliers that are not parties to the agreement and the Nebraska Power Review Board shall have no authority to impose conditions that will be binding or applicable to other suppliers that are not parties to such agreements. Such agreements shall not be considered as establishing service areas within the meaning of Chapter 70, article 10.

Source: Laws 1971, LB 349, § 1; Laws 1981, LB 181, § 44.

The provision requiring determination of whether the proposed agreement or amendment can reasonably be expected to provide a reliable wholesale power supply at a reasonable cost for the area is a sufficient standard to guide the Nebraska Power

Review Board in the exercise of its delegated legislative power hereunder. *City of Lincoln v. Nebraska P. P. Dist.*, 191 Neb. 556, 216 N.W.2d 722 (1974).

70-1002.02 Suppliers of electricity; sale in violation of approved agreement; prohibited.

No supplier shall offer, provide or sell electric energy at wholesale in areas or to customers in violation of any agreement entered into and approved by the Nebraska Power Review Board pursuant to section 70-1002.01.

Source: Laws 1971, LB 349, § 2.

70-1002.03 New transmission facilities or interconnection; agreement by affected parties; disputes submitted to board; insure prudent utility practice; rate determination; effect.

When any electric generation facility or transmission facility over seventy thousand volts is constructed or acquired, either within or without the State of Nebraska, and the output of the generation or transmission facility would be transmitted over existing transmission facilities of others within this state or transmitted over new transmission facilities to be constructed or acquired within this state or through an interconnection with existing facilities of others within this state, and such transmission of the output would substantially affect the reliability, operation, or safety of the transmission system of a generating power agency or a distribution power agency in this state, as defined in section

70-626.01, the party or parties that would jointly or individually receive the output from such electric generation or transmission facility and the party or parties whose existing transmission system would be so affected shall determine, pursuant to prudent utility practice, what new transmission facilities or interconnection, if any, should be constructed or acquired so that the output of the generation or transmission facility will be transmitted in a reliable and safe manner. As used in this section, prudent utility practice shall mean any of the practices, methods and acts at a particular time which, in the exercise of reasonable judgment in the light of the facts, including but not limited to the practices, methods, and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto, known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety, and expedition. If the parties determine that new transmission facilities or interconnection are to be required, the parties will determine what new transmission facilities should be constructed or acquired and what interconnection should be provided, utilizing to the fullest extent possible the existing transmission facilities for the maximum benefit of the electric ratepayers of this state. In the event that the parties are unable to agree, before construction begins or the acquisition is finalized, but after having made a reasonable effort to reach agreement, upon any of the terms or conditions of (1) what new transmission facilities are to be constructed or acquired, (2) who shall construct or acquire such new transmission facilities, or (3) agreement for the electrical interconnection of transmission facilities, the matter shall be submitted to the Nebraska Power Review Board for hearing and determination, before construction begins or the acquisition is finalized, in accordance with prudent utility practice as defined in this section and the provisions of sections 70-626.04 and 70-1014, utilizing to the fullest extent possible the existing transmission facilities for the maximum benefit of the electric ratepayers of this state. Any determination by such board regarding rates shall be advisory only and not binding upon the parties. Rates, tolls, and charges shall be as provided for in section 70-655.

Source: Laws 1975, LB 104, § 11; Laws 1981, LB 181, § 45.

70-1002.04 Municipalities; joint operation of electric systems; register with board; reports; action subject to review or approval.

Two or more municipalities owning or operating separate electric systems that join together for the purpose of facilitating the performance of any of their respective powers or duties shall, before such a group of municipalities commences operations, register with the Nebraska Power Review Board on such forms as the board may prescribe and containing such information as the board may request. Such a group shall comply with any additional reporting requirements the board imposes that are applied to individual municipalities. Any action taken by an individual municipality that is subjected to the Nebraska Power Review Board review or approval, shall, if taken by a group of municipalities, be subject to similar review or approval.

Source: Laws 1981, LB 181, § 56.

70-1003 Nebraska Power Review Board; establishment; composition; appointment; term; vacancy; qualifications; compensation; expenses; jurisdiction; officers; executive director; staff; reports.

(1) There is hereby established an independent board to be known as the Nebraska Power Review Board to consist of five members, one of whom shall be an engineer, one an attorney, one an accountant, and two laypersons. No person who is or who has within four years preceding his or her appointment been either a director, officer, or employee of any electric utility or an elective state officer shall be eligible for membership on the board. Members of the board shall be appointed by the Governor subject to the approval of the Legislature. Upon expiration of the terms of the members first appointed, the successors shall be appointed for terms of four years. No member of the board shall serve more than two consecutive terms. Any vacancy on the board arising other than from the expiration of a term shall be filled by appointment for the unexpired portion of the term, and any person appointed to fill a vacancy on the board shall be eligible for reappointment for two more consecutive terms. No more than three members of the board shall be registered members of that political party represented by the Governor.

(2) Each member of the board shall receive sixty dollars per day for each day actually and necessarily engaged in the performance of his or her duties, but not to exceed six thousand dollars in any one year, except for the member designated to represent the board on the Southwest Power Pool Regional State Committee or its equivalent successor, who shall receive two hundred fifty dollars for each day actually and necessarily engaged in the performance of his or her duties, not to exceed twenty thousand dollars in any one year. If the member designated to represent the board on the Southwest Power Pool Regional State Committee should for any reason no longer serve in that capacity during a year, the pay received while serving in such capacity shall not be used for purposes of calculating the six-thousand-dollar limitation for board members not serving in that capacity. When another board member acts as the proxy for the designated Southwest Power Pool Regional State Committee member, he or she shall receive the same pay as the designated member would have for that activity. Pay received while serving as proxy for such designated member shall not be used for purposes of determining whether the six-thousand-dollar limitation has been met for board members not serving as such designated member. Total pay to board members for activities related to the Southwest Power Pool shall not exceed an aggregate total of twenty-five thousand dollars in any one year. Each member shall be reimbursed for his or her actual and necessary expenses while so engaged as provided in sections 81-1174 to 81-1177. The board shall have jurisdiction as provided in Chapter 70, article 10.

(3) The board shall elect from their members a chairperson and a vice-chairperson. Decisions of the board shall require the approval of a majority of the members of the board.

(4) The board shall employ an executive director and may employ such other staff necessary to carry out the duties pursuant to Chapter 70, article 10. The executive director shall serve at the pleasure of the board and shall be solely responsible to the board. The executive director shall be responsible for the administrative operations of the board and shall perform such other duties as may be delegated or assigned to him or her by the board. The board may obtain the services of experts and consultants necessary to carry out the board's duties pursuant to Chapter 70, article 10.

(5) The board shall publish and submit a biennial report with annual data to the Governor, with copies to be filed with the Clerk of the Legislature and with

the State Energy Office. The report submitted to the Clerk of the Legislature shall be submitted electronically. The State Energy Office shall consider the information in the Nebraska Power Review Board's report when the State Energy Office prepares its own reports pursuant to sections 81-1606 and 81-1607. The report of the board shall include:

- (a) The assessments for the fiscal year imposed pursuant to section 70-1020;
 - (b) The gross income totals for each category of the industry and the industry total;
 - (c) The number of suppliers against whom the assessment is levied, by category and in total;
 - (d) The projected dollar costs of generation, transmission, and microwave applications, approved and denied;
 - (e) The actual dollar costs of approved applications upon completion, and a summary of an informational hearing concerning any significant divergence between the projected and actual costs;
 - (f) A description of Nebraska's current electric system and information on additions to and retirements from the system during the fiscal year, including microwave facilities;
 - (g) A statistical summary of board activities and an expenditure summary;
 - (h) A roster of power suppliers in Nebraska and the assessment each paid; and
 - (i) Appropriately detailed historical and projected electric supply and demand statistics, including information on the total generating capacity owned by Nebraska suppliers and the total peak load demand of the previous year, along with an indication of how the industry will respond to the projected situation.
- (6) The board may, in its discretion, hold public hearings concerning the conditions that may indicate that retail competition in the electric industry would benefit Nebraska's citizens and what steps, if any, should be taken to prepare for retail competition in Nebraska's electricity market. In determining whether to hold such hearings, the board shall consider the sufficiency of public interest.
- (7) The board may, at any time deemed beneficial by the board, submit a report to the Governor with copies to be filed with the Clerk of the Legislature and the Natural Resources Committee of the Legislature. The report filed with the Clerk of the Legislature and the committee shall be filed electronically. The report may include:
- (a) Whether or not a viable regional transmission organization and adequate transmission exist in Nebraska or in a region which includes Nebraska;
 - (b) Whether or not a viable wholesale electricity market exists in a region which includes Nebraska;
 - (c) To what extent retail rates have been unbundled in Nebraska;
 - (d) A comparison of Nebraska's wholesale electricity prices to the prices in the region; and
 - (e) Any other information the board believes to be beneficial to the Governor, the Legislature, and Nebraska's citizens when considering whether retail electric competition would be beneficial, such as, but not limited to, an update on deregulation activities in other states and an update on federal deregulation legislation.

(8) The board may establish working groups of interested parties to assist the board in carrying out the powers set forth in subsections (6) and (7) of this section.

Source: Laws 1963, c. 397, § 3, p. 1260; Laws 1971, LB 554, § 1; Laws 1978, LB 800, § 1; Laws 1980, LB 863, § 1; Laws 1981, LB 181, § 46; Laws 1981, LB 204, § 107; Laws 2000, LB 901, § 8; Laws 2010, LB797, § 1; Laws 2012, LB782, § 101; Laws 2016, LB824, § 4.

70-1004 Suppliers of electricity; filing of maps and service area statements; exception.

Each supplier which becomes a party to an agreement under the provisions of section 70-1002 shall file with the secretary of the board a suitable map or maps, in such form as the board shall prescribe, showing either the service area or customers to be served. Whenever any changes occur in the service area, new maps shall be filed. Each supplier in the state which fails to file a map or maps showing its service area or customers to be served as established by agreement shall file a statement with the secretary showing the service area and customers actually served by it, what it claims to be its service area, stating the reason it has not entered into agreements with suppliers in adjoining service areas, and if a dispute exists as to furnishing service to any service area, the nature and extent thereof. This section shall not apply to agreements referred to in subsection (2) of section 70-1002.

Source: Laws 1963, c. 397, § 4, p. 1261; Laws 1981, LB 181, § 47.

Suppliers of electricity were required to file a statement showing what it claims as its service area. City of Schuyler v. Cornhusker P. P. Dist., 181 Neb. 704, 150 N.W.2d 588 (1967).

70-1005 Suppliers of electricity; service area; application to establish; notice of hearing; exception.

Any supplier may at any time on or after July 1, 1964, apply to the board to establish its service area. In such case and in all cases where agreements have not been entered into, including cases arising under section 70-1008, the secretary shall give written notice to the parties involved citing them to appear at a time, not less than thirty days thereafter, and at a place specified in the notice for a hearing upon the matter of establishing the service areas concerned in the notice. The provisions of this section shall not apply to service within the corporate limits of any municipality.

Source: Laws 1963, c. 397, § 5, p. 1262.

70-1006 Hearings; continuance; rules of procedure.

At the hearing the board shall hear testimony and receive other evidence relating to the matter and may continue the hearing from time to time. The board shall adopt such rules of procedure as are advisable and in conformity with law.

Source: Laws 1963, c. 397, § 6, p. 1262.

70-1007 Establishment of service areas; board; orders; policy considerations.

After the hearing, the board shall make an order establishing the service areas in the matter covered by the notice. In determining any such matter, the

board shall seek to carry out the policy stated in section 70-1001. It shall give such consideration as is appropriate in each case to the following:

- (1) The supplier best able to supply the load required;
- (2) The most logical future supplier of the area;
- (3) The desires of the supplier with respect to loads and service areas it wishes to serve;
- (4) The ability to provide service at costs comparable to other suppliers in the service area and the immediate costs to the ultimate consumers involved in the transfer; and
- (5) The ability of the supplier to cope with the problems of expanding loads and increased costs.

Source: Laws 1963, c. 397, § 7, p. 1262; Laws 1979, LB 223, § 1.

Absent annexation or concurrence of the adjoining supplier, the only present means for a municipal power supplier to obtain a modification of its service area is by establishing that the present supplier cannot or will not furnish adequate electrical service or that its doing so involves a wasteful and unwarranted duplication of facilities. In re Application of City of Lincoln, 243 Neb. 458, 500 N.W.2d 183 (1993).

Elements to be considered by Power Review Board in approving service area agreement stated; area service contracts must be respected until supplier is unable to provide service in accordance with guidelines set out in this section. Cornhusker P. P. Dist. v. Loup River P. P. Dist., 184 Neb. 789, 172 N.W.2d 235 (1969).

70-1008 Certified service areas; established; municipalities; newly annexed areas; acquisition of facilities and customers; procedure; waiver of right to acquire; joint planning.

In the absence of an agreement between the suppliers affected and notwithstanding the provisions of subdivisions (1) to (5) of section 70-1007:

(1) Existing service areas presently designated by agreements and exhibits filed with and approved by the board, or previously ordered by the board, shall remain and be established as certified service areas.

(2) A municipally owned electric system, serving such municipality at retail, shall have the right, upon application to and approval by the board, to serve newly annexed areas of such municipality. Electric distribution facilities and customers of another supplier in such newly acquired certified service area may be acquired, in accordance with the procedure and criteria set forth in section 70-1010, within a period of one year and payment shall be made in respect to the value of any such facilities' customers or certified service area being transferred. The rights of a municipality to acquire such distribution facilities and customers within such newly annexed area shall be waived unless such acquisition and payment are made within one year of the date of annexation. If an application is made to the board within one year of the date of annexation for a determination of total economic impact as provided in section 70-1010, such right shall not be waived unless the municipality fails to make payment of the price determined by the board within one year of a final decision establishing such price. Notwithstanding other provisions of this section, the parties may extend the time for acquisition and payment by mutual written agreement.

(3) All retail power suppliers having adjoining certified service areas shall engage in joint planning with respect to customers, facilities, and services, taking into account the considerations specified in section 70-1007, including the possibility that an area may be annexed by a municipality within a reasonable period of time.

Source: Laws 1963, c. 397, § 8, p. 1262; Laws 1979, LB 223, § 2.

Under this section, a municipality is authorized to acquire the electric distribution facilities and customers of any other supplier within an area annexed by the municipality. This section does not require the municipality to make payment for the value of a rural power district area transferred to a city when there are no facilities or customers for a city to acquire. In re Application of City of Grand Island, 247 Neb. 446, 527 N.W.2d 864 (1995).

A municipality which operates a retail system has a preference to furnish service within its corporate limits and its zoning

area. City of Schuyler v. Cornhusker P. P. Dist., 181 Neb. 704, 150 N.W.2d 588 (1967).

A municipality that furnishes electric energy at retail has the right to serve its zoning area with specified exception. City of Gering v. Gering Valley Rural P. P. Dist., 180 Neb. 241, 142 N.W.2d 155 (1966).

70-1009 Certified service areas; modification; application; transfer of facilities and customers; considerations; impairment of rights prohibited.

(1) When one supplier at the date of enactment has customers or distribution facilities extending into the certified service area of another supplier, the customers and distribution facilities of the former supplier may be acquired by negotiation or by application of either party to the board for modification of certified service area as to ownership of facilities and customers to be served.

(2) Such amendment may be made by mutual agreement, or upon application of either party to and determination by the board, upon consideration of the factors set forth in section 70-1007, except that no transfer of facilities and customers shall be made which would impair the rights of bondholders or mortgage holders.

Source: Laws 1963, c. 397, § 9, p. 1263; Laws 1979, LB 223, § 3.

70-1010 Modification of service areas; application; procedure; suppliers agreements; exception; transfer of customers and facilities; price; how computed; impairment of obligations prohibited.

(1) The board shall have authority upon application by a supplier at any time to modify service areas or customers to be served as previously established. The same procedures as to notice, hearing, and decision shall be followed as in the case of an original application. Suppliers shall have authority by agreement to change service areas or customers to be served with the approval of the board. This section shall not apply to agreements referred to in subsection (2) of section 70-1002.

(2) In the event of a proposed transfer of customers and facilities from one supplier to another in accordance with this section or section 70-1008 or 70-1009, the parties shall attempt to agree upon the value of the certified service area and distribution facilities and customers being transferred. If the parties cannot agree upon the value, then the board shall determine the total economic impact on the selling supplier and establish the price accordingly based on, but not limited to, the following guidelines: The supplier acquiring the certified service area, distribution facilities, and customers shall purchase the electric distribution facilities of the supplier located within the affected area, together with the supplier's rights to serve within such area, for cash consideration which shall consist of (a) the current reproduction cost if the facilities being acquired were new, less depreciation computed on a straight-line basis at three percent per year not to exceed seventy percent, plus (b) an amount equal to the nonbetterment cost of constructing any facilities necessary to reintegrate the system of the supplier outside the area being transferred after detaching the portion to be sold, plus (c) an amount equal to two and one-half times the annual revenue received from power sales to existing customers of electric power within the area being transferred, except that for large commercial or industrial customers with peak demands of three hundred kilowatts or

greater during the twelve months immediately preceding the date of filing with the board, the multiple shall be five times the net revenue, defined as gross power sales, less costs of wholesale power including facilities rental charges, received from power sales to large commercial or industrial customers with measured demand of three hundred kilowatts or greater during the twelve months immediately preceding the filing with the board for service area modification. After the board has determined the price in accordance with such guidelines, the acquiring supplier may acquire such distribution facilities and customers by payment of the established price within one year of the final order.

(3) Notwithstanding the provisions of sections 70-1008 to 70-1010, no transfer of facilities and customers shall be made or approved by the board if such transfer would impair the obligations of a power supplier to holders of its bonds or mortgages.

Source: Laws 1963, c. 397, § 10, p. 1263; Laws 1979, LB 223, § 4.

The plain meaning of "existing customer" under subsection (2)(c) of this section is a customer who is purchasing or has been purchasing electricity from a supplier of electricity at the time transfer of the service area becomes imminent. The proper date to determine valuation under this section is not the date of annexation, but, rather, the date on which the acquiring service provider firmly asserts its rights to acquire the service area by filing an application with the Nebraska Power Review Board to serve the newly annexed area. In re Application of City of North Platte, 257 Neb. 551, 599 N.W.2d 218 (1999).

Subsection (2) of this section clearly provides that the Nebraska Power Review Board shall determine economic impact on the selling supplier when a proposed transfer of customers and

facilities from one supplier to another is involved and the parties are unable to agree upon the value of the certified service area, distribution facilities, and customers being transferred. In re Application of City of Grand Island, 247 Neb. 446, 527 N.W.2d 864 (1995).

In determining total economic impact on selling supplier, this section authorizes the Nebraska Power Review Board to consider factors other than those specifically named. In re Application of City of Lexington, 244 Neb. 62, 504 N.W.2d 532 (1993).

A service area is subject to modification at any time by procedure prescribed. City of Schuyler v. Cornhusker P. P. Dist., 181 Neb. 704, 150 N.W.2d 588 (1967).

70-1011 Suppliers; service outside area; application for approval; when granted; applicability of section.

Except by agreement of the suppliers involved, no supplier shall offer electric service to additional ultimate users outside its service area or construct or acquire a new electric line or extend an existing line into the service area of another supplier for the purpose of furnishing service to ultimate users therein without first applying to the board and receiving approval thereof, after due notice and hearing under rules and regulations of the board. Such approval shall be granted only if the board finds that the customer or customers proposed to be served cannot or will not be furnished adequate electric service by the supplier in whose service area the customer is located, or that the provision thereof by such supplier would involve wasteful and unwarranted duplication of facilities. This section shall not apply to agreements referred to in subsection (2) of section 70-1002.

Source: Laws 1963, c. 397, § 11, p. 1264; Laws 1981, LB 181, § 48.

Absent annexation or concurrence of the adjoining supplier, the only present means for a municipal power supplier to obtain a modification of its service area is by establishing that the present supplier cannot or will not furnish adequate electrical service or that its doing so involves a wasteful and unwarranted duplication of facilities. In re Application of City of Lincoln, 243 Neb. 458, 500 N.W.2d 183 (1993).

Where there is no competent evidence to sustain elements necessary to warrant invasion of area service rights of supplier, order of board permitting it is arbitrary and in conflict with public policy. Cornhusker P. P. Dist. v. Loup River P. P. Dist., 184 Neb. 789, 172 N.W.2d 235 (1969).

70-1012 Electric generation facilities and transmission lines; construction or acquisition; application; approval; when not required.

(1) Before any electric generation facilities or any transmission lines or related facilities carrying more than seven hundred volts are constructed or

acquired by any supplier, an application, filed with the board and containing such information as the board shall prescribe, shall be approved by the board, except that such approval shall not be required (a) for the construction or acquisition of a transmission line extension or related facilities within a supplier's own service area or for the construction or acquisition of a line not exceeding one-half mile outside its own service area when all owners of electric lines located within one-half mile of the extension consent thereto in writing and such consents are filed with the board, (b) for any generation facility when the board finds that (i) such facility is being constructed or acquired to replace a generating plant owned by an individual municipality or registered group of municipalities with a capacity not greater than that of the plant being replaced, (ii) such facility will generate less than twenty-five thousand kilowatts of electric energy at rated capacity, and (iii) the applicant will not use the plant or transmission capacity to supply wholesale power to customers outside the applicant's existing retail service area or chartered territory, (c) for acquisition of transmission lines or related facilities, within the state, carrying one hundred fifteen thousand volts or less, if the current owner of the transmission lines or related facilities notifies the board of the lines or facilities involved in the transaction and the parties to the transaction, or (d) for the construction of a qualified facility as defined in section 70-2002.

(2) A privately developed renewable energy generation facility is exempt from this section if it complies with section 70-1014.02.

Source: Laws 1963, c. 397, § 12, p. 1264; Laws 1979, LB 119, § 1; Laws 1981, LB 181, § 49; Laws 1984, LB 729, § 1; Laws 2009, LB436, § 6; Laws 2016, LB824, § 5.

The requirement that the hearing be held within thirty days unless a continuance has been requested by the applicant is directory, not mandatory. Omaha P. P. Dist. v. Nebraska P. P. Project, 196 Neb. 477, 243 N.W.2d 770 (1976).

This section is not limited to retail suppliers of electricity. City of Auburn v. Eastern Nebraska Public Power Dist., 179 Neb. 439, 138 N.W.2d 629 (1965).

70-1012.01 Suppliers; electric generation and transmission facilities; terminate construction or acquisition; filing; reasons; hearing; effect; section, how construed.

(1) If a supplier terminates construction or acquisition of electric generation or transmission facilities after receiving approval for the facilities from the board, the supplier shall file with the board, within thirty days after the action taken to terminate construction or acquisition, a statement of the factors or reasons relied upon by the supplier in taking such action. Within ten days after receipt of such a filing, the board shall give notice of the filing to such other suppliers as it deems interested or affected by such action and it shall hold a hearing for the purpose of obtaining such additional information as the board deems advisable or necessary to inform other suppliers and the public of the reasons for such termination. Notice of any such hearing shall be given to those suppliers previously given notice of the filing and to any other parties expressing interest in the approved application.

(2) The board shall not have authority to approve or deny the action of a supplier terminating construction or acquisition, and any such filing or hearing shall be advisory and solely for the purpose of informing the board, other suppliers, interested parties, and the ratepayers of this state of the factors or reasons relied upon in taking action to terminate construction or acquisition.

(3) Nothing in this section shall constitute or be construed as a defense to any cause of action, including a claim for breach of contract, resulting from such termination.

(4) A privately developed renewable energy generation facility is exempt from this section if it complies with section 70-1014.02.

Source: Laws 1979, LB 119, § 2; Laws 1981, LB 181, § 50; Laws 2016, LB824, § 6.

70-1012.02 Repealed. Laws 1984, LB 729, § 2.

70-1013 Electric generation facilities and transmission lines; application; hearing; waiver; appearances; objections; amendments.

(1) Upon application being filed under section 70-1012, the board shall fix a time and place for hearing and shall give ten days' notice by mail to such power suppliers as it deems to be affected by the application. The hearing shall be held within sixty days unless for good cause shown the applicant requests in writing that such hearing not be scheduled until a later time, but in any event such hearing shall be held not more than one hundred twenty days after the filing of the application and the board shall give its decision within sixty days after the conclusion of the hearing. Any parties interested may appear, file objections, and offer evidence. The board may grant the application without notice or hearing, upon the filing of such waivers as it may require, if in its judgment the finding required by section 70-1014 or 70-1014.01 can be made without a hearing. Such hearing shall be conducted as provided in section 70-1006. The board may allow amendments to the application, in the interests of justice.

(2) A privately developed renewable energy generation facility is exempt from this section if it complies with section 70-1014.02.

Source: Laws 1963, c. 397, § 13, p. 1265; Laws 1967, c. 425, § 1, p. 1301; Laws 2010, LB1048, § 4; Laws 2011, LB208, § 2; Laws 2013, LB340, § 1; Laws 2016, LB824, § 7.

The requirement that the hearing be held within thirty days unless a continuance has been requested by the applicant is directory, not mandatory. *Omaha P. P. Dist. v. Nebraska P. P. Project*, 196 Neb. 477, 243 N.W.2d 770 (1976).

This section provides for filing of application, notice, and hearing of matters authorized under preceding section. *City of Auburn v. Eastern Nebraska Public Power Dist.*, 179 Neb. 439, 138 N.W.2d 629 (1965).

70-1014 Electric generation facilities and transmission lines; approval or denial of application; findings required; regional line or facilities; additional consideration.

(1) After hearing, the board shall have authority to approve or deny the application. Except as provided in section 70-1014.01 for special generation applications, before approval of an application, the board shall find that the application will serve the public convenience and necessity, and that the applicant can most economically and feasibly supply the electric service resulting from the proposed construction or acquisition, without unnecessary duplication of facilities or operations.

(2) If the application involves a transmission line or related facilities planned and approved by a regional transmission organization and the regional transmission organization has issued a notice to construct or similar notice or order to a utility to construct the line or related facilities, the board shall also consider information from the regional transmission organization's planning process and may consider the benefits to the region, which shall include

Nebraska, provided by the proposed line or related facilities as part of the board's process in determining whether to approve or deny the application.

(3) A privately developed renewable energy generation facility is exempt from this section if it complies with section 70-1014.02.

Source: Laws 1963, c. 397, § 14, p. 1265; Laws 1981, LB 181, § 51; Laws 2003, LB 65, § 2; Laws 2010, LB1048, § 5; Laws 2012, LB742, § 1; Laws 2016, LB824, § 8.

In determining whether a proposed application should be approved, the Nebraska Power Review Board does not have the power to determine that the proposed transmission line should be built along a particular route. *Lincoln Electric System v. Terpsma*, 207 Neb. 289, 298 N.W.2d 366 (1980).

Nebraska Power Review Board is authorized, after hearing, to decide which of two competing facilities shall furnish service. *City of Auburn v. Eastern Nebraska Public Power Dist.*, 179 Neb. 439, 138 N.W.2d 629 (1965).

70-1014.01 Special generation application; approval; findings required; eminent domain.

(1) Except as provided in subsection (2) of this section, an application by a municipality, a registered group of municipalities, a public power district, a public power and irrigation district, an electric cooperative, an electric membership association, or any other governmental entity, for a facility that will generate not more than ten thousand kilowatts of electric energy at rated capacity and will generate electricity using solar, wind, biomass, landfill gas, methane gas, or hydropower generation technology or an emerging generation technology, including, but not limited to, fuel cells and micro-turbines, shall be deemed a special generation application. Such application shall be approved by the board if the board finds that (a) the application qualifies as a special generation application, (b) the application will provide public benefits sufficient to warrant approval of the application, although it may not constitute the most economically feasible generation option, and (c) the application under consideration represents a separate and distinct project from any previous special generation application the applicant may have filed.

(2)(a) An application by a municipality, a registered group of municipalities, a public power district, a public power and irrigation district, an electric cooperative, an electric membership association, or any other governmental entity for a facility that will generate more than ten thousand kilowatts of electric energy at rated capacity and will generate electricity using renewable energy sources such as solar, wind, biomass, landfill gas, methane gas, or new hydropower generation technology or an emerging technology, including, but not limited to, fuel cells and micro-turbines, may be filed with the board if (i) the total production from all such renewable projects, excluding sales from such projects to other electric-generating entities, does not exceed ten percent of total energy sales as shown in the producer's Annual Electric Power Industry Report to the United States Department of Energy and (ii) the applicant's governing body conducts at least one advertised public hearing which affords the ratepayers of the applicant a chance to review and comment on the subject of the application.

(b) The application filed under subdivision (2)(a) of this section shall be approved by the board if the board finds that (i) the applicant is using renewable energy sources described in this subsection, (ii) total production from all renewable projects of the applicant does not exceed ten percent of the producer's total energy sales as described in subdivision (2)(a) of this section, and (iii) the applicant's governing body has conducted at least one advertised

public hearing which affords its ratepayers a chance to review and comment on the subject of the application.

(3)(a) A community-based energy development project organized pursuant to the Rural Community-Based Energy Development Act or any privately developed project which intends to develop renewable energy sources for sale to one or more Nebraska electric utilities described in this section may also make an application to the board pursuant to this subsection if (i) the purchasing electric utilities conduct a public hearing described in subdivision (2)(a) of this section, (ii) the power and energy from the renewable energy sources is sold exclusively to such electric utilities for a term of at least twenty years, and (iii) the total production from all such renewable projects, excluding sales from such projects to other electric-generation entities, does not exceed ten percent of total energy sales of such purchasing electric utilities as shown in such utilities' Annual Electric Power Industry Report to the United States Department of Energy or the successor to such report.

(b) The application filed under subdivision (3)(a) of this section shall be approved by the board if the board finds that the purchasing electric utilities have met the conditions described in subdivision (3)(a) of this section.

(4) No facility or part of a facility which is approved pursuant to this section is subject to eminent domain by any electric supplier, or by any other entity if the purpose of the eminent domain proceeding is to acquire the facility for electric generation or transmission.

(5) A privately developed renewable energy generation facility is exempt from this section if it complies with section 70-1014.02.

Source: Laws 2003, LB 65, § 3; Laws 2009, LB561, § 2; Laws 2010, LB1048, § 7; Laws 2012, LB742, § 2; Laws 2016, LB824, § 9.

Cross References

Rural Community-Based Energy Development Act, see section 70-1901.

70-1014.02 Privately developed renewable energy generation facility; owner; duties; certification; decommissioning plan; bond; joint transmission development agreement; contents; property not subject to eminent domain.

(1)(a) A privately developed renewable energy generation facility that meets the requirements of this section is exempt from sections 70-1012 to 70-1014.01 if no less than thirty days prior to the commencement of construction the owner of the facility:

(i) Notifies the board in writing of its intent to commence construction of a privately developed renewable energy generation facility;

(ii) Certifies to the board that the facility will meet the requirements for a privately developed renewable energy generation facility;

(iii) Certifies to the board that the private electric supplier will (A) comply with any decommissioning requirements adopted by the local governmental entities having jurisdiction over the privately developed renewable energy generation facility and (B) except as otherwise provided in subdivision (b) of this subsection, submit a decommissioning plan to the board obligating the private electric supplier to bear all costs of decommissioning the privately developed renewable energy generation facility and requiring that the private electric supplier post a security bond or other instrument, no later than the

tenth year following commercial operation, securing the costs of decommissioning the facility and provide a copy of the bond or instrument to the board;

(iv) Certifies to the board that the private electric supplier has entered into or prior to commencing construction will enter into a joint transmission development agreement pursuant to subdivision (c) of this subsection with the electric supplier owning the transmission facilities of sixty thousand volts or greater to which the privately developed renewable energy generation facility will interconnect; and

(v) Certifies to the board that the private electric supplier has consulted with the Game and Parks Commission to identify potential measures to avoid, minimize, and mitigate impacts to species identified under subsection (1) or (2) of section 37-806 during the project planning and design phases, if possible, but in no event later than the commencement of construction.

(b) The board may bring an action in the name of the State of Nebraska for failure to comply with subdivision (a)(iii)(B) of this subsection. Subdivision (a)(iii)(B) of this subsection does not apply if a local government entity with the authority to create requirements for decommissioning has enacted decommissioning requirements for the applicable jurisdiction.

(c) The joint transmission development agreement shall address construction, ownership, operation, and maintenance of such additions or upgrades to the transmission facilities as required for the privately developed renewable energy generation facility. The joint transmission development agreement shall be negotiated and executed contemporaneously with the generator interconnection agreement or other directives of the applicable regional transmission organization with jurisdiction over the addition or upgrade of transmission, upon terms consistent with prudent electric utility practices for the interconnection of renewable generation facilities, the electric supplier's reasonable transmission interconnection requirements, and applicable transmission design and construction standards. The electric supplier shall have the right to purchase and own transmission facilities as set forth in the joint transmission development agreement. The private electric supplier of the privately developed renewable energy generation facility shall have the right to construct any necessary facilities or improvements set forth in the joint transmission development agreement pursuant to the standards set forth in the agreement at the private electric supplier's cost.

(2) Within ten days after receipt of a written notice complying with subsection (1) of this section, the executive director of the board shall issue a written acknowledgment that the privately developed renewable energy generation facility is exempt from sections 70-1012 to 70-1014.01.

(3) The exemption allowed under this section for a privately developed renewable energy generation facility shall extend to and exempt all private electric suppliers owning any interest in the facility, including any successor private electric supplier which subsequently acquires any interest in the facility.

(4) No property owned, used, or operated as part of a privately developed renewable energy generation facility shall be subject to eminent domain by a consumer-owned electric supplier operating in the State of Nebraska. Nothing in this section shall be construed to grant the power of eminent domain to a private electric supplier or limit the rights of any entity to acquire any public, municipal, or utility right-of-way across property owned, used, or operated as part of a privately developed renewable energy generation facility as long as the

right-of-way does not prevent the operation of or access to the privately developed renewable energy generation facility.

(5) Only a consumer-owned electric supplier operating in the State of Nebraska may exercise eminent domain authority to acquire the land rights necessary for the construction of transmission lines and related facilities. The exercise of eminent domain to provide needed transmission lines and related facilities for a privately developed renewable energy generation facility is a public use.

(6) Nothing in this section shall be construed to authorize a private electric supplier to sell or deliver electricity at retail in Nebraska.

(7) Nothing in this section shall be construed to limit the authority of or require a consumer-owned electric supplier operating in the State of Nebraska to enter into a joint agreement with a private electric supplier to develop, construct, and jointly own a privately developed renewable energy generation facility.

Source: Laws 2010, LB1048, § 6; Laws 2011, LB208, § 3; Laws 2016, LB824, § 10.

70-1015 Suppliers; electric generation facilities and transmission lines; unauthorized construction, acquisition, or service; injunction; violation; actions authorized; private electric supplier; commencement of construction prior to providing notice; violation; fine; executive director; powers and duties; dispute; hearing; procedure; decision; costs.

(1) If any supplier violates Chapter 70, article 10, by either (a) commencing the construction or finalizing or attempting to finalize the acquisition of any generation facilities, any transmission lines, or any related facilities without first providing notice or obtaining board approval, whichever is required, or (b) serving or attempting to serve at retail any customers located in Nebraska or any wholesale customers in violation of section 70-1002.02, such construction, acquisition, or service of such customers shall be enjoined in an action brought in the name of the State of Nebraska until such supplier has complied with Chapter 70, article 10.

(2) If the executive director of the board determines that a private electric supplier commenced construction of a privately developed renewable energy generation facility less than thirty days prior to providing the notice required in subdivision (1)(a) of section 70-1014.02, the executive director shall send notice via certified mail to the private electric supplier, informing it of the determination that the private electric supplier is in violation of such subdivision and is subject to a fine in the amount of five hundred dollars. The private electric supplier shall have twenty days from the date on which the notice is received in which to submit the notice described in such subdivision and to pay the fine. Within ten days after the private electric supplier submits a notice compliant with the provisions of subsection (1) of section 70-1014.02 and payment of the fine, the executive director of the board shall issue the written acknowledgment described in subsection (2) of section 70-1014.02. If the private electric supplier fails to submit a notice compliant with the provisions of subsection (1) of section 70-1014.02 and pay the fine within twenty days after the date on which the private electric supplier receives the notice from the executive director of the board, the private electric supplier shall immediately cease construction or operation of the privately developed renewable energy generation facility.

(3) If the private electric supplier disputes that construction was commenced less than thirty days prior to submitting the written notice required by subdivision (1)(a) of section 70-1014.02, the private electric supplier may request a hearing before the board. Such request shall be submitted within twenty days after the private electric supplier receives the notice sent by the executive director pursuant to subsection (2) of this section. If the private electric supplier does not accept the certified mail sent pursuant to such subsection, the executive director shall send a second notice to the private electric supplier by first-class United States mail. The private electric supplier may submit a request for hearing within twenty days after the date on which the second notice was mailed.

(4) Upon receipt of a request for hearing, the board shall set a hearing date. Such hearing shall be held within sixty days after such receipt. The board shall provide to the private electric supplier written notice of the hearing at least twenty days prior to the date of the hearing. The board or its hearing officer may grant continuances upon good cause shown or upon the request of the private electric supplier. Timely filing of a request for hearing by a private electric supplier shall stay any further enforcement under this section until the board issues an order pursuant to subsection (5) of this section or the request for hearing is withdrawn.

(5) The board shall issue a written decision within sixty days after conclusion of the hearing. All costs of the hearing shall be paid by the private electric supplier if (a) the board determines that the private electric supplier commenced construction of the privately developed renewable energy generation facility less than thirty days prior to submitting the written notice required pursuant to subsection (1) of section 70-1014.02 or (b) the private electric supplier withdraws its request for hearing prior to the board issuing its decision.

(6) A private electric supplier which the board finds to be in violation of the requirements of subsection (1) of section 70-1014.02 shall either (a) pay the fine described in this section and submit a notice compliant with the provisions of subsection (1) of section 70-1014.02 or (b) immediately cease construction or operation of the privately developed renewable energy generation facility.

Source: Laws 1963, c. 397, § 15, p. 1265; Laws 1967, c. 426, § 1, p. 1302; Laws 1981, LB 181, § 52; Laws 2011, LB208, § 4; Laws 2016, LB824, § 11; Laws 2018, LB1008, § 4.
Operative date April 12, 2018.

70-1016 Appeals; procedure.

An appeal of any final action of the board may be taken to the Court of Appeals. Such appeal shall be in accordance with rules provided by law for appeals in civil cases.

Source: Laws 1963, c. 397, § 16, p. 1265; Laws 1991, LB 732, § 123; Laws 2003, LB 187, § 13.

Decision of the Nebraska Power Review Board will be affirmed on appeal if it is supported by the evidence in the record and is not arbitrary, capricious, unreasonable, or otherwise illegal. In re Complaint of Federal Land Bank of Omaha, 223 Neb. 897, 395 N.W.2d 488 (1986).

This section provides for an appeal and necessarily contemplates the board must have evidence before it can determine

whether an agreement can be reasonably expected to provide a reliable wholesale power supply at a reasonable cost to the area. City of Lincoln v. Nebraska P. P. Dist., 191 Neb. 556, 216 N.W.2d 722 (1974).

70-1017 Suppliers; duty to furnish service; disputes submitted to board.

Any supplier of electricity at retail shall furnish service, upon application, to any applicant within the service area of such supplier if it is economically feasible to service and supply the applicant. The electric service shall be furnished by the supplier within a reasonable time after the application is made. If the supplier and the applicant cannot agree upon any of the terms under which service is to be furnished, or if the applicant alleges that the supplier is not treating all customers and applicants fairly and without discrimination within the same rate class, the matter shall be submitted to the board for hearing and determination.

Source: Laws 1963, c. 397, § 17, p. 1266; Laws 1974, LB 674, § 1; Laws 1981, LB 181, § 53.

The Nebraska Power Review Board lacks authority to determine whether a supplier of electricity may insist upon the payment of another's delinquent charges as a condition of providing electric service. *Keith County Bank v. Wheat Belt Pub. Power Dist.*, 226 Neb. 850, 415 N.W.2d 459 (1987).

Payment of another's past-due electric use charges is not a term "under which service is to be furnished" of the nature which this section empowers the board to consider. In re Complaint of Federal Land Bank of Omaha, 223 Neb. 897, 395 N.W.2d 488 (1986).

Potentially conflicting interests within a class are incompatible with the maintenance of a true class action and this aspect

may be disposed of upon motion for summary judgment. *Blankenship v. Omaha P. P. Dist.*, 195 Neb. 170, 237 N.W.2d 86 (1976).

This section referred to in connection with holding that an ordinance fixing rates for electrical energy supplied by city-owned plant is not subject to referendum. *Hoover v. Carpenter*, 188 Neb. 405, 197 N.W.2d 11 (1972).

Zoning area of city and service area of power district may overlap. *City of Gering v. Gering Valley Rural P. P. Dist.*, 180 Neb. 241, 142 N.W.2d 155 (1966).

70-1018 Suppliers; disputes over rates; submission to board; hearing; recommendations.

In the event of any dispute between suppliers concerning rates for service between such suppliers which cannot be settled by negotiations, the dispute shall be submitted to the board. The board may intervene in any such dispute on its own motion. Upon the submission of such dispute or the board's decision to intervene, the board shall set a time and place for hearing thereon and give notice as provided in section 70-1013. Following such hearing the board shall make its recommendations for the settlement of such dispute, which recommendations shall be advisory only.

Source: Laws 1963, c. 397, § 18, p. 1266.

70-1019 Board; proceedings; compel attendance of witnesses and production of documents; contempt proceedings authorized.

In any proceeding had before it under the provisions of Chapter 70, article 10, the board shall have authority, by subpoena, to compel the attendance of witnesses, and the production of any books, papers, records, accounts, or other documents which may be necessary to assist in a determination of any matter pending before the board. If any person shall disobey any such subpoena or refuse to testify concerning any matter regarding which he or she may be lawfully interrogated, the district court of Lancaster County, upon application by the board, may compel obedience by proceedings for contempt as in the case of disobedience to the requirements of a subpoena issued from such court or a refusal to testify therein.

Source: Laws 1963, c. 397, § 19, p. 1266; Laws 1981, LB 181, § 54.

70-1020 Board; expenses; assessments levied against suppliers; apportionment; collection; interest; Nebraska Power Review Fund; created; investment.

In order to defray the expenses of the Nebraska Power Review Board, there shall be imposed upon each public power district, public power and irrigation district, electric membership association, electric cooperative company, and municipality having an electric distribution system or generation and distribution system, and also upon all registered groups of municipalities, an assessment each fiscal year in such sum as shall be determined by the board and approved by the Governor. The total of such assessments shall not exceed the expenses of the board which may reasonably be anticipated for the fiscal year for which assessment is made and shall be apportioned among the various agencies in proportion to their gross income in the preceding calendar year. The board shall determine and certify such assessment to each supplier after approval of the board's budget by the Legislature and Governor. The supplier shall remit the amount of its assessment to the board within forty-five days after the mailing of the assessment. Any assessment not paid when due shall draw interest at a rate equal to the rate of interest allowed per annum under section 45-104.02, as such rate may from time to time be adjusted. The proceeds of such assessment shall be remitted to the State Treasurer for credit to the Nebraska Power Review Fund, which fund is hereby created and which, when appropriated by the Legislature, shall be used to administer the powers granted to the Nebraska Power Review Board, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Nebraska Power Review Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1963, c. 397, § 20, p. 1266; Laws 1965, c. 407, § 1, p. 1307; Laws 1969, c. 584, § 65, p. 2385; Laws 1981, LB 181, § 55; Laws 1984, LB 730, § 1; Laws 1992, Fourth Spec. Sess., LB 1, § 10; Laws 1994, LB 1066, § 64; Laws 2009, First Spec. Sess., LB3, § 43.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

70-1021 Microwave communication facilities; authorization; procedure; protest; hearing; when.

After April 24, 1978, except as provided in section 70-1022, a public power district shall not construct microwave communication facilities unless such district is authorized to construct and operate its own microwave facilities by order of the Nebraska Power Review Board. Before such microwave construction is authorized, the Nebraska Power Review Board shall find (1) that in the judgment of the board the district is not receiving the required quality of service, and will not within a reasonable time receive the required quality of service from the regulated carrier or carriers involved, or (2) that the regulated carriers would not provide the required quality of service by the same or alternate methods, at the same or lower costs to the district, and (3) that such construction would be in the public interest. Upon the filing of an application to construct microwave communication facilities under this section, the board shall give notice thereof by mail to any regulated carrier or carriers involved. The regulated carrier or carriers involved shall have ten days to file specific written protests to such application which shall set forth in detail on what points the application is being protested. Upon filing of a protest or protests by

the regulated carrier or carriers involved, the Nebraska Power Review Board shall set the matter for hearing, except that if no protests are filed the board may grant the application without hearing.

Source: Laws 1978, LB 800, § 2; Laws 1980, LB 857, § 1.

70-1022 Microwave facilities or system; authorization; when not required.

Nebraska Power Review Board authorization shall not be required for the following:

- (1) Construction of microwave facilities to be completed in a reasonable time where the district has, prior to April 24, 1978, entered into binding contractual obligations with respect to such facilities;
- (2) Extensions of fifty miles or less of any single portion of a microwave system if such portion was in existence on or before April 24, 1978; or
- (3) The addition of new equipment to modernize or upgrade but not to extend microwave facilities.

Source: Laws 1978, LB 800, § 3.

70-1023 Transferred to section 70-1001.01.

70-1024 Power supply plan; board; powers and duties; special assessment.

The board shall, prior to October 1, 1981, designate the representative organization responsible for the preparation and filing of those reports required pursuant to sections 70-1025 and 70-1026. The board may utilize a preexisting representative group from the industry if such group is willing to perform the task in the prescribed time and manner. The board shall prepare and publish the long-range power supply plan itself, if the board determines that no representative group is willing to complete such a study or that the product of any group so assembled has substantial deficiencies or cannot be completed by the prescribed date. The board shall have the power and duty to levy a special assessment in the manner described in section 70-1020 to defray the costs of such power supply plans, if the board must produce such power supply plan by itself or with consultants.

Source: Laws 1981, LB 302, § 2.

70-1025 Power supply plan; contents; filing; annual report.

(1) The representative organization shall file with the board a coordinated long-range power supply plan containing the following information:

(a) The identification of all electric generation plants operating or authorized for construction within the state that have a rated capacity of at least twenty-five thousand kilowatts;

(b) The identification of all transmission lines located or authorized for construction within the state that have a rated capacity of at least two hundred thirty kilovolts; and

(c) The identification of all additional planned electric generation and transmission requirements needed to serve estimated power supply demands within the state for a period of twenty years.

(2) Beginning in 1986, the representative organization shall file with the board the coordinated long-range power supply plan specified in subsection (1)

of this section, and the board shall determine the date on which such report is to be filed, except that such report shall not be required to be filed more often than biennially.

(3) An annual load and capability report shall be filed with the board by the representative organization. The report shall include statewide utility load forecasts and the resources available to satisfy the loads over a twenty-year period. The annual load and capability report shall be filed on dates specified by the board.

Source: Laws 1981, LB 302, § 3; Laws 1986, LB 948, § 1.

70-1026 Power supply plan; research and conservation report; contents.

The representative organization shall file, at the request of the board but no more often than biennially, a research and conservation report, which shall include the following information relative to programs enacted by the representative organization and its members:

- (1) Research and development;
- (2) Energy conservation;
- (3) Load management;
- (4) Renewable energy sources; and
- (5) Cogeneration.

Source: Laws 1981, LB 302, § 4; Laws 1986, LB 948, § 2.

70-1027 Power supply plan; research and conservation report; board; include data in biennial report; hearing.

The board shall, in its biennial report, include data from any coordinated long-range power supply plan or research and conservation report filed with it. Before publishing its biennial report, if a coordinated long-range power plan or a research and conservation report has been filed with the board in the previous reporting period, the board shall consider, at a public hearing after giving notice of such hearing, the coordinated long-range power supply plan or the research and conservation report.

Source: Laws 1981, LB 302, § 5; Laws 1986, LB 948, § 3.

70-1028 Electric transmission line approved for construction in regional transmission organization transmission plan; notice to board; failure to provide notice; effect.

(1) If an electric transmission line has been approved for construction in a regional transmission organization transmission plan, the incumbent electric transmission owner of the existing electric transmission facilities to which the electric transmission line will connect shall give notice to the board, in writing, within ninety days after such approval, if it intends to construct, own, and maintain the electric transmission line. If no notice is provided, the incumbent electric transmission owner shall surrender its first right to construct, own, and maintain the electric transmission line and any other incumbent electric transmission owner may file an application for the electric transmission line under section 70-1012. Within twenty-four months after such notice, the incumbent electric transmission owner shall file an application with the board pursuant to section 70-1012.

(2) For purposes of this section:

(a) Electric transmission line means any line and related facilities connecting to existing electric transmission facilities for transmitting electric energy at a voltage of one hundred kilovolts or greater, other than a line solely for connecting an electric generation facility to facilities owned by an electric supplier; and

(b) Incumbent electric transmission owner means an entity that: (i) Is an electric supplier; (ii) is a member of a regional transmission organization; and (iii) owns and operates electric transmission lines at a voltage of one hundred kilovolts or greater.

Source: Laws 2013, LB388, § 1; Laws 2016, LB824, § 12.

70-1029 Legislative intent.

It is the intent of the Legislature to appropriate an additional \$200,000 for FY2014-15 to the Nebraska Power Review Board from the General Fund to provide funds to conduct or cause to be conducted a study of state, regional, and national transmission infrastructure and policy and future needs for transmission infrastructure and policy to serve Nebraska electric consumers and utilities and generation facilities in Nebraska seeking to export electricity outside of the state.

Source: Laws 2014, LB1115, § 1.

70-1030 Policy of state.

It is the policy of the state to encourage and allow opportunities for development and operation of renewable energy facilities intended primarily for export from the state in a manner that protects the ratepayers of consumer-owned utility systems operating in the state from subsidizing the costs of such export facilities through their rates and that results in economic development and employment opportunities for residents and communities of the state.

Source: Laws 2014, LB1115, § 2.

70-1031 Purposes of study.

The purposes of the study provided for under sections 70-1029 to 70-1033 shall include, but not be limited to, identification of electric transmission and generation constraints and opportunities, federal and state legal and regulatory requirements and practices, national and regional transmission operation, national and regional transmission plans and policies, national and regional markets for electricity export and opportunities for and barriers to exporting electricity to such markets, and economic development benefits of expanded state, regional, and national transmission connections.

Source: Laws 2014, LB1115, § 3.

70-1032 Working group; members.

The scope of the study provided for under sections 70-1029 to 70-1033 shall receive input from a working group that may include, but not be limited to, members of the Legislature, the State Energy Office, the Department of Economic Development, public power districts and other Nebraska electric providers, renewable energy development companies, municipalities, the Southwest Power Pool, the Western Area Power Administration, other transmission system

owners, transmission operators, transmission developers, environmental interests, and other interested parties.

Source: Laws 2014, LB1115, § 4.

70-1033 Nebraska Power Review Board; duties.

(1) The Nebraska Power Review Board shall issue a request for proposals to conduct the study provided for under sections 70-1029 to 70-1033 after consultation with the working group as provided for in section 70-1032.

(2) Any contracts or agreements entered into under this section shall not be subject to the Nebraska Consultants' Competitive Negotiation Act or sections 73-301 to 73-306 or 73-501 to 73-510.

(3) The Nebraska Power Review Board shall present the results of the study to the Executive Board of the Legislative Council with a copy to the Clerk of the Legislature and the Governor on or before December 15, 2014. The report shall be submitted electronically.

Source: Laws 2014, LB1115, § 5.

Cross References

Nebraska Consultants' Competitive Negotiation Act, see section 81-1702.

ARTICLE 11

RETAIL ELECTRIC SERVICE

Section

- 70-1101. Declaration of policy.
- 70-1102. Public power districts; agreements with municipalities; operation until January 1, 1972.
- 70-1103. Public power districts; no impairment of obligation to bondholders; municipal operation; books and records; revenue.
- 70-1104. Public power districts; municipal operation; employees' rights respected.
- 70-1105. Obligation of public power district to convey to municipality; no election necessary; when.
- 70-1106. Sections, how construed.

70-1101 Declaration of policy.

It is hereby declared to be the policy of the state to provide for dependable electric service at the lowest practical cost to all of the citizens of the state, including the residents of cities and villages.

The maintenance of competing electric systems within such cities or villages results in duplication of facilities and personnel and the needless expenditure of public funds by both such competing systems; that such needless expenditure for duplicating service by publicly owned agencies is not in accord with sound public policy. Whenever such duplicating competition exists in any municipality between a public power district organized under the provisions of Chapter 70, article 6, and other public agencies, including municipalities, such competition should be eliminated in the public interest for economy of operation and lower rates to the consumer.

Source: Laws 1963, c. 398, § 2, p. 1270.

This section is applicable in instances where two or more electric systems are competing against each other for consumer business within a given municipality. The intended purpose of this section is limited to legalizing service area boundary agreements between public power districts and municipally owned electric systems and to establishing a power review board. Southern Neb. Rural P.P. Dist. v. Nebraska Electric, 249 Neb. 913, 546 N.W.2d 315 (1996).

70-1102 Public power districts; agreements with municipalities; operation until January 1, 1972.

Whenever any public power district organized under Chapter 70, article 6, is engaged in competitive retail electric service in any incorporated municipality within this state, with a system for the retail sale of electric energy owned by such municipality, such district is hereby directed, within one year from October 19, 1963, to enter into appropriate agreements with such municipality for the operation by the municipality (1) of the distribution system of the district in the municipality; (2) of all its retail business served through such distribution system; and (3) its system in all areas over which the municipality has zoning power, including such secondary transmission lines as are used in the service of the defined area. Such agreement shall provide for such operation by the municipality until January 1, 1972, or such time as such district shall have fully paid or accumulated reserves for the payment of all of the bonds or other obligations of the district incurred as the cost of construction or the purchase price of such system.

Source: Laws 1963, c. 398, § 3, p. 1270.

70-1103 Public power districts; no impairment of obligation to bondholders; municipal operation; books and records; revenue.

Nothing contained in sections 70-650.01 and 70-1101 to 70-1106 shall in any manner be construed so as to impair the obligations of the public power district to the holders of its outstanding bonds. The municipalities shall properly operate and maintain such system according to the obligations of the district to its bondholders. The municipalities shall maintain and keep separate books and records of the operations of the property of the district in the same manner as such books and records were kept by the district and shall account and pay to the district the same revenue from the property it acquires which the district would have received from the property it transfers to the city if the district had remained the operator of such property.

Source: Laws 1963, c. 398, § 4, p. 1271.

70-1104 Public power districts; municipal operation; employees' rights respected.

Any municipality assuming the management of the distribution system of any public power district under the provisions of sections 70-1101 to 70-1103 shall take over and employ all of the employees of the district theretofore operating such property on the same salary, terms and conditions as their previous employment, including their rights of seniority, pension and retirement plan without prejudice to any of such rights.

Source: Laws 1963, c. 398, § 5, p. 1271.

70-1105 Obligation of public power district to convey to municipality; no election necessary; when.

The provisions of section 70-650.01 shall be and remain in full force and effect with reference to the transfer and conveyance of its distribution system by the district as therein required. In those cases in which the municipality shall be operating the distribution system of the district, as provided in sections

70-1102 to 70-1104 at the time of the retirement of the district's bonds as described in section 70-650.01, no election shall be required as a condition of said transfer to the municipality.

Source: Laws 1963, c. 398, § 6, p. 1271.

70-1106 Sections, how construed.

Sections 70-650.01 and 70-1101 to 70-1106 shall be deemed to be complete within themselves, to cover the entire subject to which it relates and to be an independent act.

Source: Laws 1963, c. 398, § 7, p. 1272.

ARTICLE 12

STATE GRID SYSTEM

Section

70-1201. Repealed. Laws 1969, c. 793, § 1.
 70-1202. Repealed. Laws 1969, c. 793, § 1.
 70-1203. Repealed. Laws 1969, c. 793, § 1.
 70-1204. Repealed. Laws 1969, c. 793, § 1.
 70-1205. Repealed. Laws 1969, c. 793, § 1.
 70-1206. Repealed. Laws 1969, c. 793, § 1.
 70-1207. Repealed. Laws 1969, c. 793, § 1.
 70-1208. Repealed. Laws 1969, c. 793, § 1.
 70-1209. Repealed. Laws 1969, c. 793, § 1.
 70-1210. Repealed. Laws 1969, c. 793, § 1.
 70-1211. Repealed. Laws 1969, c. 793, § 1.
 70-1212. Repealed. Laws 1969, c. 793, § 1.
 70-1213. Repealed. Laws 1969, c. 793, § 1.
 70-1214. Repealed. Laws 1969, c. 793, § 1.
 70-1215. Repealed. Laws 1969, c. 793, § 1.
 70-1216. Repealed. Laws 1969, c. 793, § 1.
 70-1217. Repealed. Laws 1969, c. 793, § 1.
 70-1218. Repealed. Laws 1969, c. 793, § 1.
 70-1219. Repealed. Laws 1969, c. 793, § 1.
 70-1220. Repealed. Laws 1969, c. 793, § 1.
 70-1221. Repealed. Laws 1969, c. 793, § 1.
 70-1222. Repealed. Laws 1969, c. 793, § 1.
 70-1223. Repealed. Laws 1969, c. 793, § 1.
 70-1224. Repealed. Laws 1969, c. 793, § 1.
 70-1225. Repealed. Laws 1969, c. 793, § 1.
 70-1226. Repealed. Laws 1969, c. 793, § 1.
 70-1227. Repealed. Laws 1969, c. 793, § 1.

70-1201 Repealed. Laws 1969, c. 793, § 1.

70-1202 Repealed. Laws 1969, c. 793, § 1.

70-1203 Repealed. Laws 1969, c. 793, § 1.

70-1204 Repealed. Laws 1969, c. 793, § 1.

70-1205 Repealed. Laws 1969, c. 793, § 1.

70-1206 Repealed. Laws 1969, c. 793, § 1.

70-1207 Repealed. Laws 1969, c. 793, § 1.

70-1208 Repealed. Laws 1969, c. 793, § 1.

- 70-1209 Repealed. Laws 1969, c. 793, § 1.
- 70-1210 Repealed. Laws 1969, c. 793, § 1.
- 70-1211 Repealed. Laws 1969, c. 793, § 1.
- 70-1212 Repealed. Laws 1969, c. 793, § 1.
- 70-1213 Repealed. Laws 1969, c. 793, § 1.
- 70-1214 Repealed. Laws 1969, c. 793, § 1.
- 70-1215 Repealed. Laws 1969, c. 793, § 1.
- 70-1216 Repealed. Laws 1969, c. 793, § 1.
- 70-1217 Repealed. Laws 1969, c. 793, § 1.
- 70-1218 Repealed. Laws 1969, c. 793, § 1.
- 70-1219 Repealed. Laws 1969, c. 793, § 1.
- 70-1220 Repealed. Laws 1969, c. 793, § 1.
- 70-1221 Repealed. Laws 1969, c. 793, § 1.
- 70-1222 Repealed. Laws 1969, c. 793, § 1.
- 70-1223 Repealed. Laws 1969, c. 793, § 1.
- 70-1224 Repealed. Laws 1969, c. 793, § 1.
- 70-1225 Repealed. Laws 1969, c. 793, § 1.
- 70-1226 Repealed. Laws 1969, c. 793, § 1.
- 70-1227 Repealed. Laws 1969, c. 793, § 1.

ARTICLE 13

ARBITRATION OF DISPUTES

Section

- 70-1301. Statement of policy.
- 70-1302. Electric rate disputes; legislative determination.
- 70-1303. Wholesale purchaser; payment to supplier; when.
- 70-1304. Wholesale purchaser; billing; dispute; notice; contents.
- 70-1305. Wholesale purchaser; dispute; supplier establish escrow account.
- 70-1306. Unresolved dispute; submitted to arbitration; rules applicable.
- 70-1307. Arbitration board; membership.
- 70-1308. Arbitrators; disqualifications.
- 70-1309. Arbitration board; appointed; when; manner.
- 70-1310. Arbitration costs and expenses; how assessed.
- 70-1311. Arbitration board; personnel; hire.
- 70-1312. Arbitration board; meetings; chairperson; disputed issues.
- 70-1313. Failure to appoint an arbitrator; effect.
- 70-1314. Arbitration board; proceedings; duties.
- 70-1315. Supplier; notice to other wholesale purchasers; when.
- 70-1316. Arbitration board; preliminary written statements; hearing; notice.
- 70-1317. Dispute; production of documents and records; depositions.
- 70-1318. Arbitration board; hearing; testimony; evidence; witnesses.
- 70-1319. Arbitration board; hearing; duration.

Section

- 70-1320. Arbitration board; decision; findings.
- 70-1321. Arbitration board; decision; findings; provided to parties; filed with Nebraska Power Review Board.
- 70-1322. Escrow account; distribution.
- 70-1323. Escrow account; deficiency; effect; interest.
- 70-1324. Arbitration; time limits; extension.
- 70-1325. Arbitration board; final decision; appeal.
- 70-1326. Arbitration board; decision; reversal, modification, or vacation; procedure.
- 70-1327. Appellate court; trial; de novo on the record.
- 70-1328. Record on appeal.
- 70-1329. Wholesale purchaser; failure or refusal to make payment; supplier; remedies.

70-1301 Statement of policy.

It is hereby declared to be the public policy of this state to provide adequate electrical service at as low overall cost as possible, consistent with sound business practices and, in furtherance of such policy, electric service should be provided by nonprofit entities including public power districts, public power and irrigation districts, nonprofit electric cooperatives, and municipalities.

Source: Laws 1979, LB 207, § 1.

70-1302 Electric rate disputes; legislative determination.

In order to meet the policies set out in section 70-1301, protect the financial integrity of suppliers of electricity at wholesale, avoid imposing a discriminatory burden on purchasers of electricity at wholesale, and insure that wholesale rates are adequate, fair, reasonable, and nondiscriminatory, it is necessary to provide a method to expeditiously and fairly resolve wholesale electric rate disputes, including rate disputes relating to transmission and delivery of electrical energy, between the supplier of electrical energy and any and all of its purchasers of electricity at wholesale. To carry out such policies, the necessity for the enactment of sections 70-1301 to 70-1329 is hereby declared to be a matter of legislative determination.

Source: Laws 1979, LB 207, § 2.

70-1303 Wholesale purchaser; payment to supplier; when.

A purchaser of electricity at wholesale shall pay to the supplier of such electricity the entire amount of the charge for such electricity within the time set forth in the power contract between the purchaser and supplier or, if no such contract exists or no time is set forth in the contract, within thirty days after the date on which the supplier mails the billing to the purchaser.

Source: Laws 1979, LB 207, § 3.

70-1304 Wholesale purchaser; billing; dispute; notice; contents.

If a purchaser of electricity at wholesale elects to dispute all or any portion of the wholesale electric charge established by the supplier, the purchaser shall nevertheless pay the full amount of the charge stated in the billing within the time established in section 70-1303 and shall give notice in writing to the supplier stating such election. The notice shall fully describe the basis for the dispute and set forth a detailed statement of disputed issues and the relief sought by the purchaser. Written notice of a dispute concerning a mathematical, metering, or quantity error in the billing shall be given by either party to

the other within the time set forth in the power contract or, if no contract exists or no time is set forth in the contract, within sixty days after the discovery of the error.

Source: Laws 1979, LB 207, § 4.

70-1305 Wholesale purchaser; dispute; supplier establish escrow account.

Upon written demand by the purchaser made at the time of the notice of dispute as provided in section 70-1304, the supplier shall, each month, deposit the disputed portion of the monthly payment as specified by the purchaser, but not to exceed twenty percent of the total amount billed, into an escrow account, in a bank located within the county of the principal place of business of the supplier. Such deposits shall be made from the date of the demand until settlement of the dispute as provided by sections 70-1301 to 70-1329. The escrow funds shall be invested, to the extent possible, in securities of the United States Government and the balance in other insured interest-bearing accounts of the bank.

Source: Laws 1979, LB 207, § 5.

70-1306 Unresolved dispute; submitted to arbitration; rules applicable.

If the dispute remains unresolved forty-five days after the receipt by the supplier of the notice in writing of such dispute and payment of the full amount of the charge as provided in section 70-1304 has been made, the dispute shall be submitted to arbitration in accordance with sections 70-1301 to 70-1329.

Except as otherwise provided in sections 70-1301 to 70-1329, the Commercial Arbitration Rules of the American Arbitration Association, as amended and in effect March 1, 1977, shall be used to the extent that they are determined by the arbitration board to be applicable to the procedures set forth in sections 70-1301 to 70-1329. The Administrative Fee Schedule contained in such rules shall not apply.

Source: Laws 1979, LB 207, § 6.

70-1307 Arbitration board; membership.

An arbitration board shall be formed to arbitrate the wholesale electric rate dispute in conformity with the standards set out in section 70-1302. The arbitration board shall consist of three members, one of whom shall be selected by the purchaser, one of whom shall be selected by the supplier, and a third shall be selected by the other two arbitrators.

Source: Laws 1979, LB 207, § 7.

70-1308 Arbitrators; disqualifications.

The arbitrators shall not be employees, agents, or consultants of any party to the dispute and shall have no financial or personal interest in the result of the arbitration.

Source: Laws 1979, LB 207, § 8.

70-1309 Arbitration board; appointed; when; manner.

The arbitration board shall be appointed within ninety days after the receipt of the notice of the dispute. Each party shall notify the other in writing of the

name and address of the arbitrator selected by it within sixty days after receipt of the notice of the dispute. The two arbitrators selected by the parties shall notify the parties in writing of the name and address of the third arbitrator selected by them.

Source: Laws 1979, LB 207, § 9.

70-1310 Arbitration costs and expenses; how assessed.

Each of the parties to the dispute shall pay the costs and expenses of the arbitrator selected by it together with one-half of the costs and expenses of the third arbitrator and one-half of the costs and expenses of the hearing, unless the parties otherwise agree or the arbitration board, in its discretion, assesses such costs and expenses, or any part thereof, in a different manner.

Source: Laws 1979, LB 207, § 10.

70-1311 Arbitration board; personnel; hire.

The arbitration board shall hire an official stenographer to report its hearings and may hire an attorney to assist it in ruling on the admissibility of evidence offered and in the preparation of the record which will constitute the bill of exceptions in any appeal from the decision of the arbitration board and may hire such other personnel as it deems necessary to conduct the hearing.

Source: Laws 1979, LB 207, § 11.

70-1312 Arbitration board; meetings; chairperson; disputed issues.

The arbitration board shall meet within thirty days of the appointment of the third arbitrator. The third arbitrator shall be the chairperson and preside at all meetings and hearings of the arbitration board and shall provide notice to the parties at least five days before the first meeting. The parties shall meet with the arbitration board at its first meeting for the purpose of clarifying and narrowing the specific issues from those set forth in the detailed statement of disputed issues.

Source: Laws 1979, LB 207, § 12.

70-1313 Failure to appoint an arbitrator; effect.

If a party to the dispute fails or refuses to appoint its arbitrator within the time established in section 70-1309, the arbitrator appointed by the other party shall, within ten days after such failure apply to the American Arbitration Association for the appointment of the second arbitrator. Within ten days after the appointment of the second arbitrator, the two arbitrators so selected shall appoint a third arbitrator.

Source: Laws 1979, LB 207, § 13.

70-1314 Arbitration board; proceedings; duties.

The arbitration board may proceed in the absence of any party who, after due notice, fails to appear or obtain a continuance. An award shall not be made without a hearing or based solely on the default of a party. The arbitration board shall (1) consider only those matters necessary for the resolution of the disputed issues, (2) have no authority to add to, subtract from, or alter the

issues except as otherwise agreed to by the parties, and (3) not alter or modify any existing contract.

Source: Laws 1979, LB 207, § 14.

70-1315 Supplier; notice to other wholesale purchasers; when.

The supplier shall give written notice, by certified mail, to its other purchasers at wholesale within fifteen days after receipt of the notice of the appointment of the third arbitrator.

Source: Laws 1979, LB 207, § 15.

70-1316 Arbitration board; preliminary written statements; hearing; notice.

The parties shall submit preliminary written statements to the arbitration board within sixty days after the convening of the first meeting of the arbitration board. The arbitration board shall fix the time and place for a hearing which shall commence not more than seventy-five days after the convening of the first meeting of the arbitration board. The board shall give each party written notice of the hearing by certified mail, at least ten days in advance of the hearing, unless the parties waive such notice.

Source: Laws 1979, LB 207, § 16.

70-1317 Dispute; production of documents and records; depositions.

At all times after receipt of the notice of the dispute, each party shall make available to the other, for inspection and copying, all documents, data, and records with respect to the dispute for the presentation of the matter to the arbitration board. If the parties fail to agree on the production of documents and records, the arbitration board shall determine the matter. The parties may also take depositions with respect to the dispute.

Source: Laws 1979, LB 207, § 17.

70-1318 Arbitration board; hearing; testimony; evidence; witnesses.

At the hearing the arbitration board shall hear testimony and receive evidence in person or by deposition relating to the dispute and may continue the hearing from time to time. The arbitration board shall be bound by the rules of evidence applicable in district court. The arbitration board may require a party to submit such evidence as the board may deem necessary or desirable for making its decision and the board is authorized to subpoena witnesses and documents. Opportunity shall be afforded to both parties to present evidence and cross-examine witnesses. The parties may be represented by counsel.

Source: Laws 1979, LB 207, § 18.

70-1319 Arbitration board; hearing; duration.

The arbitration board shall seek to complete its hearing on the issues submitted to it within forty-five days after the commencement of the hearing. The arbitration board may extend the time to complete the hearing beyond the forty-five-day period if the board determines that such extension is necessary.

Source: Laws 1979, LB 207, § 19.

70-1320 Arbitration board; decision; findings.

The arbitration board shall render its decision within thirty days after completion of the hearing. The decision shall be in writing, be accompanied by findings of fact, and be signed by the arbitrators supporting the decision. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. The decision of a majority of the arbitrators shall be the decision of the arbitration board.

Source: Laws 1979, LB 207, § 20.

70-1321 Arbitration board; decision; findings; provided to parties; filed with Nebraska Power Review Board.

A copy of the decision and accompanying findings and conclusions shall be mailed to each party and its attorney of record by certified mail. The arbitration board shall file its decision, together with all pleadings and exhibits filed with the arbitration board, with the secretary of the Nebraska Power Review Board within five days of the date of the decision.

Source: Laws 1979, LB 207, § 21.

70-1322 Escrow account; distribution.

Within thirty days after the decision of the arbitration board, the funds and investments in the escrow account established pursuant to section 70-1305, together with the interest thereon, shall be distributed or apportioned in accordance with the decision of the arbitration board.

Source: Laws 1979, LB 207, § 22.

70-1323 Escrow account; deficiency; effect; interest.

In the event that the escrow and interest thereon are insufficient to satisfy the provisions of the arbitration board's decision, the party liable for such deficiency shall take all actions necessary to obtain such funds and make payment thereof, including interest, within thirty days from the date of the decision. Interest shall be at the rate set forth in the contract between the parties or in the absence of a contract or if no rate of interest is set forth in the contract, at the average rate of interest earned by the escrow account established pursuant to section 70-1305.

Source: Laws 1979, LB 207, § 23.

70-1324 Arbitration; time limits; extension.

Except as otherwise provided in section 70-1326, the parties may, by mutual written agreement filed with the arbitration board, extend any of the time limits prescribed in sections 70-1301 to 70-1329.

Source: Laws 1979, LB 207, § 24.

70-1325 Arbitration board; final decision; appeal.

The final decision of the arbitration board shall be binding upon the parties. If a party to any arbitration proceeding is not satisfied with the decision entered by the arbitration board, such party may appeal as provided in section 70-1326 to reverse, vacate, or modify the decision, and such decision shall be in abeyance until the appellate court has issued its opinion.

Source: Laws 1979, LB 207, § 25; Laws 1991, LB 732, § 124.

70-1326 Arbitration board; decision; reversal, modification, or vacation; procedure.

The procedure to obtain reversal, modification, or vacation of a decision rendered by the arbitration board shall be (1) by filing notice of appeal with the Nebraska Power Review Board within thirty days after the date of the filing of the decision with the Nebraska Power Review Board as provided in section 70-1321 or (2) by filing with the arbitration board and with the Nebraska Power Review Board a motion for rehearing within ten days after the filing of the decision with the Nebraska Power Review Board as provided in section 70-1321. If the arbitration board denies the motion for rehearing, a notice of appeal must be filed with the arbitration board and with the Nebraska Power Review Board within thirty days after the date of the filing by the arbitration board with the Nebraska Power Review Board of the decision denying the motion to the party appealing, except that when the arbitration board fails to file a decision on the motion for rehearing within thirty days after such motion is filed, the appeal to the Court of Appeals may be perfected by filing a notice of appeal before the arbitration board files a decision on the motion for rehearing and the review shall be the same as if the board had denied the motion for rehearing. Oral arguments on a motion for rehearing shall be granted when requested. An appeal shall be deemed perfected and the appellate court shall have jurisdiction of the cause when a notice of an appeal has been filed with the Nebraska Power Review Board and appeal has been taken in the manner provided by law for appeals from the district court in civil cases.

Source: Laws 1979, LB 207, § 26; Laws 1991, LB 732, § 125; Laws 1992, LB 360, § 31.

70-1327 Appellate court; trial; de novo on the record.

Trial in the appellate court shall be de novo on the record. Such case shall be advanced in the same manner as other causes which involve the public welfare and convenience and shall be set for an early hearing.

Source: Laws 1979, LB 207, § 27; Laws 1991, LB 732, § 126.

70-1328 Record on appeal.

The verbatim testimony transcribed by the official stenographer, including all exhibits received, shall constitute the bill of exceptions. The decision appealed and the bill of exceptions duly certified by the members of the arbitration board shall constitute the complete record on appeal.

Source: Laws 1979, LB 207, § 28; Laws 1991, LB 732, § 127.

70-1329 Wholesale purchaser; failure or refusal to make payment; supplier; remedies.

If a purchaser fails or refuses to make payment to the supplier as required by sections 70-1301 to 70-1329, the supplier may, after a charge remains unpaid thirty days after the due date, file suit in the district court in which the supplier or purchaser resides for a writ of mandamus to compel payment of the disputed amount, plus interest, pursuant to sections 70-1301 to 70-1329. If the court issues a writ of mandamus and the purchaser gives the written notice of disputed issues as required by section 70-1304 the matter shall proceed to arbitration as provided by sections 70-1301 to 70-1329. If the court declines to

issue a writ of mandamus, it shall nevertheless retain jurisdiction of the matter for the purpose of determining the amount due to the supplier.

Source: Laws 1979, LB 207, § 29.

ARTICLE 14

JOINT PUBLIC POWER AUTHORITY ACT

Section

- 70-1401. Act, how cited.
- 70-1402. Terms, defined.
- 70-1403. Legislative findings.
- 70-1404. Public power district; joint project authorized; limitation; study.
- 70-1405. Creation of joint authority; procedure; resolution; membership; considerations; notice; challenge.
- 70-1406. Proposed joint authority; members; application; Nebraska Power Review Board; duties; proof of authority's establishment.
- 70-1407. Joint authority; board of directors; appointment; votes; oath; officers; quorum; expenses; additional districts; withdrawal; dissolution.
- 70-1408. Joint authority; executive committee; creation; exercise powers of board.
- 70-1409. Joint authority; rights and powers; enumerated.
- 70-1410. Joint authority; statutory restrictions applicable; when.
- 70-1411. Joint authority; annual audit.
- 70-1412. Joint authority member; power and energy contracts; conditions; payments; member; furnish authority money, property, and services; authority; lend member funds.
- 70-1413. Joint authority project; sale of excess capacity; limitations; applicability.
- 70-1414. Joint authority; issue bonds; pledge revenue; restrictions.
- 70-1415. Joint authority projects; bonds; issuance; proceeds; uses.
- 70-1416. Bonds; secured by trust agreement; covenants authorized.
- 70-1417. Directors; establish rates and fees; limitation; pledge; lien.
- 70-1418. Funds from bond issuance; investment authorized; conditions.
- 70-1419. Bondholder; trustee; enforcement of rights.
- 70-1420. Refunding bonds; issuance; conditions.
- 70-1421. Board of directors; grants-in-aid and loans; authorized; powers.
- 70-1422. Sections, supplemental to other provisions.
- 70-1423. Sections, how construed.

70-1401 Act, how cited.

Sections 70-1401 to 70-1423 shall be known and may be cited as the Joint Public Power Authority Act.

Source: Laws 1982, LB 852, § 1.

70-1402 Terms, defined.

As used in the Joint Public Power Authority Act, unless the context otherwise requires:

(1) Agency shall mean any public body, authority, or commission which is engaged in the generation, transmission, or distribution of electric power and energy and which issues indebtedness;

(2) Bonds shall mean electric revenue bonds, notes, warrants, certificates, or other obligations of indebtedness of a joint authority issued under the Joint Public Power Authority Act and shall include refunding bonds and notes issued pending permanent revenue bond financing;

(3) Cost or cost of a project shall mean, but shall not be limited to, the cost of acquisition, construction, reconstruction, improvement, enlargement, or extension of any project, including the cost of studies, plans, specifications, surveys,

and estimates of related costs and revenue; the cost of land, land rights, rights-of-way, easements, water rights, fees, permits, approvals, licenses, certificates, franchises, and the preparation of applications for and securing the same; administrative, legal, engineering, and inspection expenses; financing fees, expenses, and costs; working capital; initial fuel costs; interest on the bonds during the period of construction and for such reasonable period thereafter as may be determined by the joint authority; establishment of reserves; and all other expenditures of the joint authority incidental, necessary, or convenient to the acquisition, construction, reconstruction, improvement, enlargement, or extension of any project and the placing of such project in operation;

(4) Governing body shall mean the board of directors of a public power district;

(5) Joint authority shall mean a public body and body corporate and politic organized in accordance with the Joint Public Power Authority Act;

(6) Public power district shall mean a public power district organized under or subject to Chapter 70, article 6; and

(7) Project shall mean any system or facilities for the generation, transmission, and transformation, or any combination thereof, of electric power and energy by any means whatsoever including, but not limited to, any one or more electric generating units situated at a particular site or any interest in any of the foregoing or any right to the output, capacity, use, or services of such units, any system or facilities for the production, storage, or distribution of hydrogen, or any system or facilities for the production or distribution of ethanol.

Source: Laws 1982, LB 852, § 2; Laws 1986, LB 1230, § 51; Laws 2005, LB 139, § 19.

70-1403 Legislative findings.

The Legislature hereby finds and determines that:

(1) Certain public power districts in this state which are empowered severally to engage in the generation, transmission, and distribution of electric power and energy have for many years owned and operated systems for the distribution of electric power and energy to customers in their respective service areas, have the resources and ability to facilitate the development of a hydrogen production and distribution industry, and have the resources and ability to facilitate the development of an ethanol production and distribution industry;

(2) Such public power districts owning electric distribution systems have an obligation to provide the inhabitants and customers of the district an adequate, reliable, and economical source of electric power and energy in the future;

(3) In order to enhance the economy within the state, to achieve the economies and efficiencies made possible by the proper planning, financing, and location of facilities for the generation and transmission of electric power and energy, the production, storage, and distribution of hydrogen, and the production and distribution of ethanol which are not practical for any public power district acting alone, and to ensure an adequate, reliable, and economical supply of electric power and energy, hydrogen, and ethanol to the people of this state, it is desirable for the state to authorize public power districts to jointly plan, finance, develop, own, and operate electric generation and transmission facilities, hydrogen production, storage, or distribution facilities, and ethanol production and distribution facilities appropriate to their needs in

order to provide for their present and future power requirements for all uses without supplanting or displacing the service at retail of other electric suppliers operating in this state;

(4) In order for public power districts of this state to secure long-term, supplemental, short-term, and interim financing for both capital projects and operational purposes, it is also desirable to authorize public power districts to join together to create joint authorities which can issue revenue bonds and other obligations and make loans to its member public power districts at less cost than if the individual public power district secured its own financing; and

(5) The creation of joint authorities by public power districts which own electric distribution systems, hydrogen production, storage, or distribution facilities, and ethanol production and distribution facilities for the joint planning, financing, development, ownership, and operation of electric generation and transmission facilities, hydrogen production, storage, or distribution facilities, and ethanol production and distribution facilities and the issuance of revenue bonds by such joint authorities for such purposes as provided by the Joint Public Power Authority Act is for a public use and for public purposes and is a means of achieving economies, adequacy, and reliability in the generation or transmission of electric power and energy and in the meeting of future needs of this state and its inhabitants.

Source: Laws 1982, LB 852, § 3; Laws 1986, LB 1230, § 52; Laws 2005, LB 139, § 20.

70-1404 Public power district; joint project authorized; limitation; study.

(1) A public power district may plan, finance, develop, acquire, purchase, construct, reconstruct, improve, enlarge, own, operate, and maintain an undivided interest as a tenant in common in a project situated within or without the state jointly with one or more public power districts in this state owning electric distribution facilities, hydrogen production, storage, or distribution facilities, or ethanol production or distribution facilities or with any political subdivision or agency of this state or of any other state and may make such plans and enter into such contracts not inconsistent with the Joint Public Power Authority Act as are necessary or appropriate, except that membership of public power districts in a joint authority shall consist only of public power districts located within this state.

(2) Nothing in the Joint Public Power Authority Act shall prevent public power districts from undertaking studies to determine whether there is a need for a project or whether such project is feasible.

Source: Laws 1982, LB 852, § 4; Laws 1986, LB 1230, § 53; Laws 2005, LB 139, § 21.

70-1405 Creation of joint authority; procedure; resolution; membership; considerations; notice; challenge.

(1) The governing body of two or more public power districts may by resolution determine that it is in the best interests of the respective public power districts and their electric customers to create a joint authority. Such resolution shall be approved by a majority of the members of the governing body of the public power district. Each public power district which will be a member of the joint authority must approve for membership every other district that will be a member of the joint authority.

(2) In determining whether or not the creation of a joint authority for such purpose is in the best interests of the public power districts and their electric customers, the governing body shall take into consideration, but shall not be limited to:

(a) Whether or not a separate entity may be able to finance the costs of a project or projects or provide financing for its members in a more efficient and economical manner;

(b) Whether or not a better financial market acceptance may result if one entity is responsible for issuing all of the bonds required for a project or projects or providing financing for its members in a timely and orderly manner; and

(c) Whether or not savings and other advantages may be obtained by providing a separate entity responsible for the acquisition, purchase, construction, ownership, and operation of a project or projects or for issuing bonds in order to make loans to its member districts.

(3) If the proposed creation of a joint authority is found to be in the best interests of two or more public power districts, the governing body of each public power district shall cause notice of its action to be published once a week for two consecutive weeks in a newspaper of general circulation within the operating area of each public power district. Any elector of the district affected by the action of the governing body of such public power district may, by action de novo, instituted in the district court for the county in which the principal office of such public power district is located, within twenty days following the last publication of the prescribed notice, challenge the action of the public power district on the grounds that creation of a joint authority is not in the best interest of that public power district.

Source: Laws 1982, LB 852, § 5.

70-1406 Proposed joint authority; members; application; Nebraska Power Review Board; duties; proof of authority's establishment.

(1) Upon fulfilling the requirements set forth in section 70-1405, the governing body of each public power district which determines that its participation in the proposed joint authority is in its best interest shall by resolution appoint one representative to the proposed joint authority. Any two or more representatives so appointed shall file with the Nebraska Power Review Board an application signed by a representative of each proposed member public power district setting forth:

(a) The names of all the proposed member public power districts and their respective appointed representatives;

(b) A certified copy of the resolution of each member public power district determining it is in its best interest to participate in the proposed joint authority and the resolution appointing such representative;

(c) The desire that the joint authority be organized as a public body and a body corporate and politic under sections 70-1401 to 70-1423; and

(d) The name which is proposed for the joint authority.

(2) The Nebraska Power Review Board shall examine the application and shall determine whether the application complies with the requirements set forth in subsection (1) of this section and that the proposed name of the joint authority is not identical with that of any other corporation of the state or any

state agency or instrumentality, or so nearly similar as to lead to confusion and uncertainty. The Nebraska Power Review Board shall then receive and file the application.

(3) Upon receipt of such application, it shall be the duty of the Nebraska Power Review Board at once to make an investigation of the proposed joint authority to determine whether the application complies with the requirements set forth in subsection (1) of this section and that the proposed name of the joint authority is not identical with the name of any other corporation of the state or any state agency or instrumentality, or so nearly similar as to lead to confusion and uncertainty. If the board determines that the joint authority is in the best interest of each of the public power districts, the board or its successor by its executive board shall, within thirty days of receipt of such application, execute a certificate in duplicate, setting forth a true copy of the application and declaring that the application has been approved.

(4) The Nebraska Power Review Board shall immediately cause one copy of the certificate to be forwarded to and filed with the Secretary of State and the other one in the office of the county clerk of the county where the principal place of business of each member of the joint authority is located. Thereupon such joint authority under its designated name shall constitute a body politic and corporate.

(5) In any suit, action, or proceeding involving the validity or enforcement of, or relating to, any contract of the joint authority, the joint authority, in the absence of the establishment of fraud, shall be conclusively deemed to have been established in accordance with sections 70-1401 to 70-1423 upon proof of the issuance of the prescribed certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action, or proceeding, and shall be conclusive proof of the filing and contents of such certificate.

Source: Laws 1982, LB 852, § 6.

70-1407 Joint authority; board of directors; appointment; votes; oath; officers; quorum; expenses; additional districts; withdrawal; dissolution.

(1) The management and control of a joint authority shall be vested in a board of directors. The governing body of each member public power district of a joint authority shall appoint a representative who shall be a director of the joint authority. The representative, at the discretion of the public power district, may be an officer or employee of the public power district. Each director shall have not less than one vote and may have such additional votes as a two-thirds majority of the members of the joint authority shall determine. In determining any such additional votes of each director, consideration shall be given to the financial obligations to the joint authority of each member. Each director shall serve at the pleasure of the governing body by which he or she was appointed. Each appointed director, before entering upon his or her duties, shall take and subscribe to an oath before a person authorized by law to administer oaths to execute the duties of his or her office faithfully and impartially, and a record of each such oath shall be filed with the governing body of the appointing public power district.

The board of directors of the joint authority shall annually elect, with each representative of member public power districts having one vote, one of the directors as chairperson, another as vice-chairperson, and another person or

persons who may but need not be directors as treasurer, secretary, and, if desired, assistant secretary. The office of treasurer may be held by the secretary or assistant secretary. The board of directors may also appoint such additional officers as it deems necessary. The secretary or assistant secretary of the joint authority shall keep a record of the proceedings of the joint authority, and the secretary shall be the custodian of all books, records, documents, and papers filed with the joint authority, the minute book or journal of the joint authority, and its official seal, in compliance with the provisions of section 70-622.

A majority of the directors of the joint authority then in office shall constitute a quorum. A vacancy on the board of directors of the joint authority shall not impair the right of a quorum to exercise all rights and perform all the duties of a joint authority. Any action taken by the joint authority under the provisions of sections 70-1401 to 70-1423 may be authorized by resolution at any regular or special meeting held pursuant to notice in accordance with the bylaws of the joint authority, and each such resolution shall take effect immediately and need not be published or posted. Three-fourths of the votes which the directors present are entitled to cast, with a quorum present, shall be necessary and sufficient to take any action or to pass any resolution. No director of a joint authority shall receive any compensation for the performance of duties provided under sections 70-1401 to 70-1423, except that each director may be paid his or her actual and necessary expenses incurred while engaged in the performance of such duties.

(2) After the creation of a joint authority, any other public power district may become a member (a) upon application to such joint authority, and (b) with the unanimous consent of the members of the joint authority evidenced by the resolutions of their respective governing bodies. Notice of additional members shall be given to the Secretary of State and the Nebraska Power Review Board.

(3) Any public power district may withdraw from the joint authority at any time, except that all contractual rights acquired and contractual obligations incurred by a public power district while such public power district was a member shall remain in full force and effect.

Whenever the board of directors of a joint authority and the governing body of each of its member public power districts shall by resolution determine that the purposes for which the joint authority was formed have been substantially fulfilled and that all bonds issued and all other obligations incurred by the joint authority have been fully paid or satisfied, such board of directors and governing bodies may declare the joint authority to be dissolved. On the effective date of such resolution, the title to all funds and other property owned by the joint authority at the time of such dissolution shall vest in the member public power districts of the joint authority as provided in sections 70-1401 to 70-1423 and the bylaws of the joint authority.

Source: Laws 1982, LB 852, § 7.

70-1408 Joint authority; executive committee; creation; exercise powers of board.

The board of directors of a joint authority may create an executive committee the composition of which shall be set forth in the bylaws of the joint authority. The executive committee shall have and shall exercise the powers and authority of the board of directors during intervals between the board's meetings in accordance with the board's bylaws, rules, motions, or resolutions. The terms

of office of the members of the executive committee and the method of filling vacancies shall be fixed by the bylaws of the joint authority.

Source: Laws 1982, LB 852, § 8.

70-1409 Joint authority; rights and powers; enumerated.

Each joint authority shall have all the rights and powers necessary or convenient to carry out and effectuate the purposes and provisions of the Joint Public Power Authority Act including, but not limited to, the right and power:

(1) To adopt bylaws for the regulation of the affairs and the conduct of its business and to prescribe rules, regulations, and policies in connection with the performance of its functions and duties;

(2) To adopt an official seal and alter the same at pleasure;

(3) To maintain an office at such place or places as it may determine;

(4) To sue and be sued in its own name and to plead and be impleaded;

(5) To receive, administer, and comply with the conditions and requirements respecting any gift, grant, or donation of any property or money;

(6) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, including an interest in land less than an interest in fee;

(7) To sell, lease, exchange, transfer, or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest in such property;

(8) To pledge or assign any money, rents, charges, or other revenue and any proceeds derived by the joint authority from the sales of property, insurance, or condemnation awards;

(9) To issue bonds of the joint authority for the purpose of providing funds for any of its corporate purposes;

(10) To authorize the construction, operation, or maintenance of any project or projects by any person, firm, or corporation, including political subdivisions and agencies of any state or of the United States;

(11) To acquire by negotiated purchase or lease an existing project, a project under construction, or other property, either individually or jointly, with one or more public power districts in this state or with any political subdivisions or agencies of this state or any other state or with other joint authorities created pursuant to the Joint Public Power Authority Act;

(12) To dispose of by negotiated sale or lease an existing project, a project under construction, or other property, either individually or jointly, with one or more public power districts in this state, with any political subdivisions or agencies of this state or any other state or, with other joint authorities created pursuant to the Joint Public Power Authority Act, except that no such sale or lease of any project located in this state shall be made to any private person, firm, or corporation engaged in the business of generating, transmitting, or distributing electricity for profit;

(13) To fix, charge, and collect rents, rates, fees, and charges for electric power or energy, hydrogen, or ethanol and other services, facilities, and commodities sold, furnished, or supplied through any project;

(14) To generate, produce, transmit, deliver, exchange, purchase, or sell for resale only electric power or energy, to produce, store, deliver, or distribute hydrogen for use in fuel processes, or to produce, deliver, or distribute ethanol and to enter into contracts for any or all such purposes, subject to sections 70-1410 and 70-1413;

(15) To negotiate and enter into contracts for the purchase, exchange, interchange, wheeling, pooling, or transmission of electric power and energy with any public power district, any other joint authority, any political subdivision or agency of this state or any other state, any electric cooperative, or any municipal agency which owns electric generation, transmission, or distribution facilities in this state or any other state;

(16) To negotiate and enter into contracts for the sale or use of electric power and energy, hydrogen, or ethanol with any joint authority, electric cooperative, any political subdivision or agency or any public or private electric utility of this state or any other state, any joint agency, electric cooperative, municipality, public or private electric utility, or any state or federal agency or political subdivision, subject to sections 70-1410 and 70-1413;

(17) To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the joint authority under the Joint Public Power Authority Act, including contracts with persons, firms, corporations, and others;

(18) To apply to the appropriate agencies of the state, the United States, or any other state and to any other proper agency for such permits, licenses, certificates, or approvals as may be necessary to construct, maintain, and operate projects in accordance with such licenses, permits, certificates, or approvals, and to obtain, hold, and use the same rights granted in any licenses, permits, certificates, or approvals as any other person or operating unit would have under such documents;

(19) To employ engineers, architects, attorneys, appraisers, financial advisors, and such other consultants and employees as may be required in the judgment of the joint authority and to fix and pay their compensation from funds available to the joint authority. The joint authority may employ technical experts and such other officers, agents, and employees as it may require and shall assess their qualifications, duties, compensation, and term of office. The board may delegate to one or more of the joint authority's employees or agents such powers and duties as the board may deem proper;

(20) To make loans or advances for long-term, supplemental, short-term, and interim financing for both capital projects and operational purposes to those member districts on such terms and conditions as the board of directors of the joint authority may deem necessary and to secure such loans or advances by assignment of revenue, receivables, or other sums of the member district and such other security as the board of directors of the joint authority may determine; and

(21) To sell or lease its dark fiber pursuant to sections 86-574 to 86-578.

Any joint authority shall have the same power of eminent domain as the public power districts have under section 70-670.

Source: Laws 1982, LB 852, § 9; Laws 1986, LB 1230, § 54; Laws 2001, LB 827, § 17; Laws 2002, LB 1105, § 479; Laws 2005, LB 139, § 22.

70-1410 Joint authority; statutory restrictions applicable; when.

Any joint authority created pursuant to sections 70-1401 to 70-1423 which is itself engaged in the generation, transmission, or sale of electrical energy, at wholesale or retail, or which is itself engaged in the construction, maintenance, expansion, improvement, or operation of a power generating plant or other facility for the production or transmission of electrical energy shall comply with the restrictions contained in Chapter 70, articles 10 and 13, and the provisions of sections 70-624 to 70-680.

Source: Laws 1982, LB 852, § 10.

70-1411 Joint authority; annual audit.

Any joint financing authority created pursuant to sections 70-1401 to 70-1423 shall be required to submit to an annual audit in the same manner as a public power district pursuant to sections 70-623 to 70-623.03.

Source: Laws 1982, LB 852, § 11.

70-1412 Joint authority member; power and energy contracts; conditions; payments; member; furnish authority money, property, and services; authority; lend member funds.

(1) Any public power district which is a member of the joint authority may contract to buy from the joint authority power and energy required for its present or future requirements, including the capacity and output of one or more specified projects. As the creation of a joint authority is an alternative method whereby a public power district may obtain the benefits and assume the responsibilities of ownership in a project, any such contract may provide that the public power district so contracting shall be obligated to make the payments required by the contract whether or not a project is completed, operable, or operating notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output of a project or the power and energy contracted for, and that such payments under the contract shall not be subject to any reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the joint authority or any other member of the joint authority under the contract or any other instrument. Any contract with respect to the sale or purchase of capacity or output of a project entered into between a joint authority and its member public power districts may also provide that if one or more of such public power districts shall default in the payment of its or their obligations with respect to the purchase of such capacity or output, then the remainder of the member public power districts, which are purchasing capacity and output under the contract, shall be required to accept and pay for and shall be entitled proportionately to use or otherwise dispose of the capacity or output which was to be purchased by the defaulting public power district.

Any such contracts with respect to the sale or purchase of capacity, output, power, or energy from a project may extend for a period not exceeding fifty years from the date a project is estimated to be placed in normal continuous operation; and the execution and effectiveness of such contract shall not be subject to any authorizations or approvals by the state or any agency, commission, or instrumentality, or political subdivision thereof.

(2) Payments by a public power district under any contract for the purchase of capacity and output from a joint authority shall be made from the revenue

derived from the ownership and operation of the electric system of such public power district. A public power district shall be obligated to fix, charge, and collect rents, rates, fees, and charges for electric power and energy and other services, facilities, and commodities sold, furnished, or supplied through its electric system sufficient to provide revenue adequate to meet its obligations under any such contract and to pay any and all other amounts payable from or constituting a charge and lien upon such revenue, including amounts sufficient to pay the principal of and interest on bonds, if any, issued by the public power district for purposes related to its electric system.

(3) Any public power district which is a member of a joint authority may furnish the joint authority with money derived from the ownership and operation of its electric system or facilities and provide the joint authority with personnel, equipment, and property, both real and personal. Any public power district may also provide any services to a joint authority.

(4) Any member of a joint authority may contract for, advance, or contribute funds derived solely from the ownership and operation of its electric system or facilities to a joint authority as may be agreed upon by the joint authority and the member, and the joint authority shall repay such advances or contributions from proceeds of bonds, from operating revenue, or from other funds of the joint authority, together with interest at a rate agreed upon by the member and the joint authority.

(5) The joint authority may advance and lend to its members funds derived from the issuance of its bonds as may be agreed upon by the joint authority and the member, and such member shall repay such advances or contributions together with interest at a rate agreed upon by the members and the joint authority.

Source: Laws 1982, LB 852, § 12.

70-1413 Joint authority project; sale of excess capacity; limitations; applicability.

Excess capacity or output of a project not then required by any of the members of a joint authority shall be first offered for sale or exchange pursuant to section 70-626.01. Any sale of available capacity and energy from the joint authority's project shall only be for the period required for the joint authority to fully utilize the amount of capacity and energy originally purchased in the project. The limitations provided in this section shall not apply to the temporary sale of excess capacity and energy without the state in cases of emergency or when required to fulfill obligations under any pooling or reserve-sharing agreements, except that sales of excess capacity or output of a project to electric cooperatives, electric or public utilities, and other persons, the interest on whose securities and other obligations is not exempt from taxation by the federal government, shall not be made in such amounts, for such periods of time, and under such terms and conditions as will cause the interest on bonds issued to finance the cost of a project to become taxable by the federal government. This section shall not apply to sales of ethanol or hydrogen.

Source: Laws 1982, LB 852, § 13; Laws 1986, LB 1230, § 55; Laws 2005, LB 139, § 23.

70-1414 Joint authority; issue bonds; pledge revenue; restrictions.

A joint authority may issue bonds and pledge the revenue, or any portion thereof, derived or to be derived from all or any of its projects, and any additions and improvements to or extensions of such projects, or contributions or advances from or loans to its members to pay for the principal and interest of such bonds. Bonds of a joint authority shall be authorized by resolution adopted by its board of directors. Any bonds so issued shall be subject to the restrictions contained in sections 70-644 to 70-648.

Source: Laws 1982, LB 852, § 14.

70-1415 Joint authority projects; bonds; issuance; proceeds; uses.

(1) No joint authority shall undertake any project required to be financed, in whole or in part, with the proceeds of bonds without the approval of two-thirds of its members. A joint authority is hereby authorized to issue at one time or from time to time its bonds to pay all or any part of the cost of any of the authorized purposes. The principal of, premium, if any, and the interest on such bonds shall be payable solely from the funds provided for such payment. The bonds of each issue may be sold at public or private sale, may be sold at such price, and shall bear interest at such rate or rates, as may be determined by the board of directors of the joint authority. The bonds of each issue shall be dated and shall mature in such amounts and at such time or times, not exceeding fifty years from their respective date or dates, as may be determined by the board of directors of the joint authority and may be made redeemable before maturity at such price or prices and under such terms and conditions as may be fixed by the board of directors of the joint authority prior to issuing the bonds. The board of directors of the joint authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the state. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes as if he or she had remained in office until such delivery. The board of directors of the joint authority may also provide for the authentication of the bonds by a trustee or fiscal agent. The bonds may be issued in coupon or in fully registered form, or both, as the directors of the joint authority may determine, and provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds.

(2) The proceeds of the bonds of each issue shall be used solely for the purposes for which such bonds have been issued, and shall be disbursed in such manner and under such restrictions, if any, as the board of directors of the joint authority may provide in the resolution authorizing the issuance of such bonds or in any trust agreement securing the same. The joint authority may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The joint authority may also provide for the replacement of any bonds which shall have become mutilated or shall have been destroyed or lost.

(3) Bonds may be issued under sections 70-1401 to 70-1423 without obtaining the consent or approval of the state or any political subdivision or any agency, commission, or instrumentality thereof.

Source: Laws 1982, LB 852, § 15.

70-1416 Bonds; secured by trust agreement; covenants authorized.

In the discretion of the board of directors of the joint authority, any bonds issued under the Joint Public Power Authority Act may be secured by a trust agreement by and between the joint authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state. Such trust agreement or the resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders and of the trustee as may be reasonable and proper and not in violation of law and may restrict the individual right of action by bondholders. The trust agreement or the resolution providing for the issuance of such bonds may contain covenants including, but not limited to, the following:

(1) The pledge of all or any part of the revenue derived or to be derived from the project or projects to be financed by the bonds or from the electric system or facilities, hydrogen production, storage, or distribution facilities, or ethanol production or distribution facilities of a joint authority;

(2) The rents, rates, fees, and charges to be established, maintained, and collected and the use and disposal of revenue, gifts, grants, and funds received or to be received by the joint authority;

(3) The setting aside of reserves and the investment, regulation, and disposition of such reserves;

(4) The custody, collection, securing, investment, and payment of any money held for the payment of bonds;

(5) Limitations or restrictions on the purposes to which the proceeds of sale of bonds to be issued may be applied;

(6) Limitations or restrictions on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, or the refunding of outstanding or other bonds;

(7) The procedure, if any, by which the terms of any contract with bondholders may be amended, the percentage of bonds the holders of which must consent to, and the manner in which such consent may be given;

(8) Events of default and the rights and liabilities arising from such default, the terms and conditions upon which bonds issued under the Joint Public Power Authority Act shall become or may be declared due before maturity, and the terms and conditions upon which such declaration and its consequences may be waived;

(9) The preparation and maintenance of a budget;

(10) The retention or employment of consulting engineers, independent auditors, and other technical consultants;

(11) Limitations on or the prohibition of free service to any person, firm, or corporation, public or private;

(12) The acquisition and disposal of property, except that no project or part of such project shall be mortgaged by such trust agreement or resolution,

except that the same may be mortgaged in the same manner as provided for a public power district by section 70-644;

(13) Provisions for insurance and for accounting reports and the inspection and audit of such reports; and

(14) The continuing operation and maintenance of the project.

Source: Laws 1982, LB 852, § 16; Laws 1986, LB 1230, § 56; Laws 2005, LB 139, § 24.

70-1417 Directors; establish rates and fees; limitation; pledge; lien.

A two-thirds majority vote of the directors of the joint authority present, with each member casting the number of votes to which he or she is entitled, is authorized to fix, charge, and collect rents, rates, fees, and charges for electric power and energy, hydrogen, ethanol, and other services, related to the generation, transmission, and sale of electric energy, to the production, storage, or distribution of hydrogen, or to the production or distribution of ethanol. For so long as any bonds of a joint authority are outstanding and unpaid, the rents, rates, fees, and charges shall be so fixed as to provide revenue at least sufficient, together with other available funds, to pay all costs of and charges and expenses in connection with the proper operation and maintenance of its projects and all necessary repairs, replacements, or renewals of such projects, to pay when due the principal of, premium, if any, and interest on all bonds payable from such revenue, to create and maintain reserves and comply with such covenants as may be required by any resolution or trust agreement authorizing and securing bonds, and to pay any and all amounts which the joint authority may be obligated to pay from such revenue by law or contract.

Any pledge made by a joint authority pursuant to the Joint Public Power Authority Act shall be valid and binding from the date the pledge is made. The revenue, securities, and other money so pledged and then held or thereafter received by the joint authority or any fiduciary shall immediately be subject to the lien of the pledge without any physical delivery of such pledge or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the member district or joint authority without regard to whether such parties have notice of such lien.

Source: Laws 1982, LB 852, § 17; Laws 1986, LB 1230, § 57; Laws 2005, LB 139, § 25.

70-1418 Funds from bond issuance; investment authorized; conditions.

The resolution authorizing the bonds of any issue or the trust agreement securing such bonds may provide that any of such money may be temporarily invested and reinvested pending disbursements of such money in such securities and other investments as shall be provided in such resolution or trust agreement, and shall provide that any bank or trust company with which such money shall be deposited shall act as trustee of such money and shall hold and apply the same for purposes pursuant to this section, subject to such regulation as sections 70-1401 to 70-1423 and such resolution or trust agreement may provide.

Source: Laws 1982, LB 852, § 18.

70-1419 Bondholder; trustee; enforcement of rights.

Any holder of bonds issued under sections 70-1401 to 70-1423 or any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights pursuant to this section may be restricted by such trust agreement or the resolution authorizing the issuance of such bonds, may, either at law or in equity, by suit, action, mandamus, or other proceeding, protect and enforce any and all rights under the laws of the state or granted in sections 70-1401 to 70-1423, or, to the extent permitted by law, under such trust agreement or resolution authorizing the issuance of such bonds or under any agreement or other contract executed by the joint authority pursuant to sections 70-1401 to 70-1423, and may enforce and compel the performance of all duties required by sections 70-1401 to 70-1423 or by such trust agreement or resolution to be performed by any joint authority or member district or by any officer of such joint authority, including the fixing, charging, and collecting of rents, rates, fees, and charges.

Source: Laws 1982, LB 852, § 19.

70-1420 Refunding bonds; issuance; conditions.

A joint authority is hereby authorized to provide by resolution for the issuance of refunding bonds of the joint authority for the purpose of refunding any bonds then outstanding, in advance of their maturity or earlier redemption date, which shall have been issued under sections 70-1401 to 70-1423, including the payment of any redemption premium on such bonds and any interest accrued or to accrue to the date of redemption of such bonds. The issuance of such bonds, the maturities, and other details of such bonds, the rights of the holders of such bonds, and the rights, duties, and obligations of the joint authority in respect to the same shall be governed by the appropriate provisions of sections 70-1401 to 70-1423 which relate to the issuance of bonds.

Source: Laws 1982, LB 852, § 20.

70-1421 Board of directors; grants-in-aid and loans; authorized; powers.

The board of directors of a joint authority is hereby authorized to make application and to enter into contracts for and to accept grants-in-aid and loans from the federal and state governments and their agencies for planning, acquiring, constructing, expanding, maintaining, and operating any project or facility, or participating in any research or development program, or performing any function which such joint authority may be authorized by general or local law to provide or perform.

In order to exercise the authority granted by this section, the board of directors of a joint authority may:

- (1) Enter into and carry out contracts with the state or federal government or any agency or institution thereof under which such government, agency, or institution grants financial or other assistance to the joint authority;
- (2) Accept such assistance or funds as may be granted or loaned by the state or federal government with or without such a contract;
- (3) Agree to and comply with any reasonable conditions which are imposed upon such grants or loans; and
- (4) Make expenditures from any funds so granted.

Source: Laws 1982, LB 852, § 21.

70-1422 Sections, supplemental to other provisions.

Sections 70-1401 to 70-1421 shall be deemed to provide an additional, alternative, and complete method for the doing of the things authorized thereby and shall be deemed and construed to be supplemental and additional to powers conferred by existing laws, and shall not be regarded as in degradation of any powers not existing, except that insofar as provisions of sections 70-1401 to 70-1423 are inconsistent with the provisions of any other special or local law, the provisions of sections 70-1401 to 70-1423 shall be controlling. Nothing in sections 70-1401 to 70-1423 shall be construed to authorize the issuance of the bonds for the purpose of financing facilities to be owned wholly or in part by any private corporation.

Source: Laws 1982, LB 852, § 22.

70-1423 Sections, how construed.

In order to effectuate the purposes and policies prescribed in sections 70-1401 to 70-1423, the provisions of sections 70-1401 to 70-1423 shall be liberally construed.

Source: Laws 1982, LB 852, § 23.

ARTICLE 15**SUPPLIERS OF ELECTRIC POWER AND ENERGY**

Section

- 70-1501. Statement of policy.
- 70-1502. Suppliers; agreements authorized.
- 70-1503. Agreement; Nebraska Power Review Board; approval required; procedure.
- 70-1504. Agreement; dispute; hearing.
- 70-1505. Supplier; competition and antitrust provisions; exemption.

70-1501 Statement of policy.

It is the public policy of this state to provide its citizens with adequate electric service at as low an overall cost as possible, consistent with sound business practices, and in furtherance of such policy it is necessary to avoid and eliminate conflict and competition among and between suppliers of electric power and energy and to avoid duplication of facilities and resources which result from such conflict and competition.

Source: Laws 1984, LB 805, § 1.

70-1502 Suppliers; agreements authorized.

In furtherance of the policy of this state as set forth in section 70-1501, suppliers of electric power and energy, including public power districts, non-profit corporations, public power and irrigation districts, individual municipalities, registered groups of municipalities, public corporations, electric membership associations, cooperatives, and any other entities, are authorized to enter into written agreements between or among themselves which (1) prohibit, limit, or set conditions on the right of any party to the agreement to sell power and energy at wholesale to any entity which is then or thereafter served by another party to the agreement or to any entity listed in the agreement as a customer of another party to the agreement or (2) require any party to the agreement which sells power and energy at wholesale to any entity which is then or thereafter served by another party to the agreement or to any entity listed in the

agreement as a customer of another party to the agreement to purchase power and energy from another party to the agreement.

Source: Laws 1984, LB 805, § 2.

70-1503 Agreement; Nebraska Power Review Board; approval required; procedure.

Before any agreement made pursuant to section 70-1502 or amendment to such agreement shall become effective, it shall be submitted to and approved by the Nebraska Power Review Board. When requested to approve such agreement or amendment, the Nebraska Power Review Board shall determine whether such agreement or amendment is in furtherance of the public policy of this state as set forth in section 70-1501. The board may make such investigation as it determines is necessary, give ten days' notice by mail to such alternate power suppliers as it deems affected by the agreement or amendment, and hold a hearing if it determines one to be desirable. At the conclusion of its investigation, the Nebraska Power Review Board shall approve the agreement or amendment unless it determines that the agreement or amendment cannot be reasonably expected to fulfill the purposes of sections 70-1501 to 70-1505. The purpose of this section is to promote and encourage the making of agreements pursuant to section 70-1502.

Source: Laws 1984, LB 805, § 3.

70-1504 Agreement; dispute; hearing.

In the event of any disagreement arising among the parties to an agreement authorized by sections 70-1501 to 70-1505 which cannot be settled by negotiations, the dispute may be submitted to the Nebraska Power Review Board. Upon the submission of any such disagreement to the board, the board shall set a time and place for hearing thereon and give notice as provided in section 70-1013. Following such hearing, the board shall make its recommendations for the settlement of such disagreement, which recommendations shall be advisory only.

Source: Laws 1984, LB 805, § 4.

70-1505 Supplier; competition and antitrust provisions; exemption.

In the exercise of the powers granted in sections 70-1501 to 70-1505 and in Chapter 70, article 10, to execute agreements authorized by sections 70-1501 to 70-1505 or other agreements authorized by Chapter 70, article 10, a supplier of electric power and energy shall be exempt from any law, rule, or regulation of this state regulating competition. It is intended that a supplier of electric power and energy carrying out the activities described by an agreement authorized by sections 70-1501 to 70-1505 or any other agreement authorized by Chapter 70, article 10, receive full exemption and immunity from state and federal antitrust laws in light of the public purposes and regulatory provisions of sections 70-1501 to 70-1505.

Source: Laws 1984, LB 805, § 5.

ARTICLE 16

DENIAL OR DISCONTINUANCE OF UTILITY SERVICE

Cross References

Unlawful reconnection of discontinued service, penalty, see section 28-515.02.

Section

- 70-1601. Applicant for service; denial prohibited, when.
- 70-1602. Domestic subscriber, defined.
- 70-1603. Municipal utility; owned and operated by a village; discontinuance of service; notice; procedure.
- 70-1604. Municipal utility; owned and operated by a village; discontinuance of service; conference; notice; procedure.
- 70-1605. Discontinuance of service; notice; procedure.
- 70-1606. Discontinuance of service; notice; contents.
- 70-1607. Discontinuance of service; third-party notice procedure.
- 70-1608. Discontinuance of service; dispute; conference.
- 70-1609. Discontinuance of service; dispute; statement; effect.
- 70-1610. Conference; employee; duties.
- 70-1611. Conference; employee; decision to terminate service; when.
- 70-1612. Appeal; hearing; procedure.
- 70-1613. Appeal; hearing; domestic subscriber; rights.
- 70-1614. Appeal; hearing; management office; duties.
- 70-1615. Sections; not applicable; when.

70-1601 Applicant for service; denial prohibited, when.

No applicant for the services of a public or private utility company furnishing water, natural gas, or electricity at retail in this state shall be denied service because of unpaid bills for similar service which are not collectible at law because of statutes of limitations or discharge in bankruptcy proceedings.

Source: Laws 1972, LB 1201, § 2; R.S.1943, (1987), § 18-417; Laws 1988, LB 792, § 1.

70-1602 Domestic subscriber, defined.

As used in sections 70-1603 to 70-1615, unless the context otherwise requires, domestic subscriber shall not include municipalities, cities, villages, political subdivisions, companies, corporations, partnerships, limited liability companies, or businesses of any nature.

Source: Laws 1979, LB 143, § 2; R.S.1943, (1987), § 19-2703; Laws 1988, LB 792, § 2; Laws 1993, LB 121, § 417.

70-1603 Municipal utility; owned and operated by a village; discontinuance of service; notice; procedure.

No municipal utility owned and operated by a village furnishing water, natural gas, or electricity at retail in this state shall discontinue service to any domestic subscriber for nonpayment of any past-due account unless such utility first gives written notice by mail to any subscriber whose service is proposed to be terminated at least seven days prior to termination.

Source: Laws 1979, LB 143, § 16; Laws 1982, LB 522, § 2; R.S.1943, (1987), § 19-2716; Laws 1988, LB 792, § 3; Laws 1996, LB 1044, § 369; Laws 2010, LB849, § 17.

70-1604 Municipal utility; owned and operated by a village; discontinuance of service; conference; notice; procedure.

Prior to the discontinuance of service to any domestic subscriber by a municipal utility owned and operated by a village, the domestic subscriber, upon request, shall be provided a conference with the board of trustees of the village. A municipal utility owned and operated by a village shall not be subject

to sections 70-1608 to 70-1614, but the board of trustees shall establish a procedure to resolve utility bills when a conference is requested by a domestic subscriber. The procedure shall be in writing and a copy of such procedure shall be furnished upon the request of any domestic subscriber. The board of trustees shall notify the domestic subscriber of the time, place, and date scheduled for such conference.

Source: Laws 1979, LB 143, § 17; R.S.1943, (1987), § 19-2717; Laws 1988, LB 792, § 4.

70-1605 Discontinuance of service; notice; procedure.

No public or private utility company, other than a municipal utility owned and operated by a village, furnishing water, natural gas, or electricity at retail in this state shall discontinue service to any domestic subscriber for nonpayment of any past-due account unless the utility company first gives notice to any subscriber whose service is proposed to be terminated. Such notice shall be given in person, by first-class mail, or by electronic delivery, except that electronic delivery shall only be used if the subscriber has specifically elected to receive such notices by electronic delivery. If notice is given by first-class mail or electronic delivery, such notice shall be conspicuously marked as to its importance. Service shall not be discontinued for at least seven days after notice is sent or given. Holidays and weekends shall be excluded from the seven days.

Source: Laws 1972, LB 1201, § 1; R.R.S.1943, (1977), § 18-416; Laws 1979, LB 143, § 1; Laws 1982, LB 522, § 1; R.S.1943, (1987), § 19-2702; Laws 1988, LB 792, § 5; Laws 1996, LB 1044, § 370; Laws 2010, LB849, § 18; Laws 2015, LB104, § 1.

70-1606 Discontinuance of service; notice; contents.

The notice required by section 70-1605 shall contain the following information:

- (1) The reason for the proposed disconnection;
- (2) A statement of intention to disconnect unless the domestic subscriber either pays the bill or reaches an agreement with the utility regarding payment of the bill;
- (3) The date upon which service will be disconnected if the domestic subscriber does not take appropriate action;
- (4) The name, address, and telephone number of the utility's employee or department to whom the domestic subscriber may address any inquiry or complaint;
- (5) The domestic subscriber's right, prior to the disconnection date, to request a conference regarding any dispute over such proposed disconnection;
- (6) A statement that the utility may not disconnect service pending the conclusion of the conference;
- (7) A statement to the effect that disconnection may be postponed or prevented upon presentation of a duly licensed physician's certificate which shall certify that a domestic subscriber or resident within such subscriber's household has an existing illness or handicap which would cause such subscriber or resident to suffer an immediate and serious health hazard by the disconnection of the utility's service to that household. Such certificate shall be filed with the

utility within five days of receiving notice under this section and will prevent the disconnection of the utility's service for a period of thirty days from such filing. Only one postponement of disconnection shall be allowed under this subdivision for each incidence of nonpayment of any past-due account;

(8) The cost that will be borne by the domestic subscriber for restoration of service;

(9) A statement that the domestic subscriber may arrange with the utility for an installment payment plan;

(10) A statement to the effect that those domestic subscribers who are welfare recipients may qualify for assistance in payment of their utility bill and that they should contact their caseworker in that regard; and

(11) Any additional information not inconsistent with this section which has received prior approval from the board of directors or administrative board of any utility.

Source: Laws 1979, LB 143, § 3; R.S.1943, (1987), § 19-2704; Laws 1988, LB 792, § 6.

70-1607 Discontinuance of service; third-party notice procedure.

Each utility subject to section 70-1603 or 70-1605 shall establish a third-party notice procedure for the notification of a designated third party of any proposed discontinuance of service and shall advise its subscribers, including new subscribers, of the availability of such procedures.

Source: Laws 1979, LB 143, § 4; R.S.1943, (1987), § 19-2705; Laws 1988, LB 792, § 7.

70-1608 Discontinuance of service; dispute; conference.

A domestic subscriber may request a conference in regard to any dispute over a proposed discontinuance of service before an employee designated by the utility to hear such matters. The employee designated by the utility shall hear and decide all matters disputed by domestic subscribers. The subjects to be heard shall include matters relating to a disputed bill.

Source: Laws 1979, LB 143, § 5; R.S.1943, (1987), § 19-2706; Laws 1988, LB 792, § 8.

70-1609 Discontinuance of service; dispute; statement; effect.

A domestic subscriber may dispute the proposed discontinuance of water, natural gas, or electricity by notifying the utility with a written statement that sets forth the reasons for the dispute and the relief requested. If a statement has been made by the subscriber, a conference shall be held before the utility may discontinue service.

Source: Laws 1979, LB 143, § 7; R.S.1943, (1987), § 19-2708; Laws 1988, LB 792, § 9.

70-1610 Conference; employee; duties.

Upon notice to the employee designated by the utility of any request for a conference by a domestic subscriber, the employee shall:

(1) Notify the domestic subscriber, in writing, of the time, place, and date scheduled for the conference; and

(2) Hold a conference within fourteen days of the receipt of the domestic subscriber's request. Such conference shall be informal and not governed by the Nebraska Evidence Rules. If the employee determines at the conference that the domestic subscriber did not receive proper notice or was denied any other right afforded under sections 70-1605 to 70-1615, the employee shall recess and continue the conference at such time as the subscriber has been afforded his or her rights. Failure of a domestic subscriber to attend a scheduled conference shall relieve the utility of any further action prior to the discontinuance of service. If a domestic subscriber contacts the utility prior to the scheduled conference and demonstrates that failure to attend is for a legitimate reason, the utility shall make a reasonable effort to reschedule the conference.

Source: Laws 1979, LB 143, § 8; R.S.1943, (1987), § 19-2709; Laws 1988, LB 792, § 10.

Cross References

Nebraska Evidence Rules, see section 27-1103.

70-1611 Conference; employee; decision to terminate service; when.

The employee of the utility shall, based solely on the evidence presented at the conference, affirm, reverse, or modify any decision by the utility involving a disputed bill which results in a threatened termination of utility service. The employee shall allow termination of utility service only as a measure of last resort after the utility has exhausted all other remedies less drastic than termination.

Source: Laws 1979, LB 143, § 9; R.S.1943, (1987), § 19-2710; Laws 1988, LB 792, § 11.

70-1612 Appeal; hearing; procedure.

Any domestic subscriber may appeal an adverse decision of the utility employee to a management office designated by the utility or to the utility board when designated by the utility. Each utility shall establish a hearing procedure to resolve utility bills appealed by domestic subscribers. The procedure shall be in writing and a copy of such procedure shall be furnished upon the request of any domestic subscriber. Such appeal shall be filed with the management office or utility board within the time specified in the procedures established by the utility. Nothing in sections 70-1602 to 70-1615 shall prohibit any utility from providing such additional stages of appeal as it may deem appropriate.

Source: Laws 1979, LB 143, § 10; R.S.1943, (1987), § 19-2711; Laws 1988, LB 792, § 12.

70-1613 Appeal; hearing; domestic subscriber; rights.

At any hearing held pursuant to section 70-1612, the domestic subscriber may:

- (1) Be represented by legal counsel or other representative or spokesperson;
- (2) Examine and copy, not less than three business days prior to such hearing, the utility's file and records pertaining to all matters directly relevant to the dispute or utilized in any way by the utility in reaching the decision to propose termination or to take other action which is the subject of the hearing;

- (3) Present witnesses and offer evidence;
- (4) Confront and cross-examine such other witnesses as may appear and testify at the hearing; and
- (5) Make or have made a record of the proceedings at his or her own expense.

Source: Laws 1979, LB 143, § 12; R.S.1943, (1987), § 19-2713; Laws 1988, LB 792, § 13.

70-1614 Appeal; hearing; management office; duties.

In any appeal filed pursuant to section 70-1612, the management office designated by the utility shall notify the domestic subscriber of the time, place, and date scheduled for such hearing. The notice requirements, hearing procedures, and other rights of domestic subscribers shall be set forth in the procedures established under sections 70-1612 and 70-1613.

Source: Laws 1979, LB 143, § 13; R.S.1943, (1987), § 19-2714; Laws 1988, LB 792, § 14.

70-1615 Sections; not applicable; when.

Sections 70-1602 to 70-1614 shall not apply to any disconnections or interruptions of services made necessary by the utility for reasons of repair or maintenance or to protect the health or safety of the domestic subscriber or of the general public.

Source: Laws 1979, LB 143, § 14; R.S.1943, (1987), § 19-2715; Laws 1988, LB 792, § 15.

ARTICLE 17

ELECTRICAL SERVICE PURCHASE AGREEMENTS

Section

- 70-1701. Terms, defined.
- 70-1702. Purchase agreement; contents.
- 70-1703. Agreement; other provisions applicable.
- 70-1704. Ownership agreement; terms and conditions.
- 70-1705. Sections; how construed.

70-1701 Terms, defined.

For purposes of sections 70-1701 to 70-1705:

- (1) Power has the same meaning as in section 70-601; and
- (2) Public entity means a municipality, a registered group of municipalities, a public power district, a public power and irrigation district, an electric cooperative, an electric membership association, a joint entity formed under the Interlocal Cooperation Act, a joint public agency formed under the Joint Public Agency Act, an agency formed under the Municipal Cooperative Financing Act, or any other governmental body or subdivision of government.

Source: Laws 2004, LB 969, § 1.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.
Municipal Cooperative Financing Act, see section 18-2401.

70-1702 Purchase agreement; contents.

Notwithstanding any other provision of Nebraska law, any public entity may enter into an agreement for the purchase of power to be generated by a project consisting of one or more electric generating facilities. A purchase agreement may contain such terms and conditions as the public entity may determine, including provisions whereby the public entity agrees to accept and pay for additional power generated by a project if another public entity that is a purchaser of power from the same project defaults or otherwise is unable to take or pay for such power. A purchase agreement may further provide that the public entity is obligated to make payments regardless of whether power is provided, produced, or delivered to the public entity or whether the project contemplated by a purchase agreement is completed, operable, or operating, and notwithstanding suspension, interruption, interference, reduction, or curtailment of the output of power from such project.

Source: Laws 2004, LB 969, § 2.

70-1703 Agreement; other provisions applicable.

Any municipality that enters into an agreement for the purchase of power containing any of the provisions described in section 70-1702 shall be deemed to have entered into such agreement under the provisions of this section and sections 18-412.06 and 70-1705. No agreement shall be deemed an agreement entered into pursuant to sections 18-412.09 and 70-1704 unless such agreement specifically states that it is entered into pursuant to such sections.

Source: Laws 2004, LB 969, § 3.

70-1704 Ownership agreement; terms and conditions.

If a public entity enters into an ownership agreement of any electric facility pursuant to section 18-412.09, the agreement may contain such terms and conditions as the public entity may determine.

Source: Laws 2004, LB 969, § 4.

70-1705 Sections; how construed.

Sections 70-1701 to 70-1705 shall be liberally construed to effectuate their purposes. The provisions of sections 70-1701 to 70-1705 shall be independent of and supplemental to any other applicable provisions of law, petition for creation, or charter.

Source: Laws 2004, LB 969, § 5.

ARTICLE 18

PUBLIC ENTITIES MANDATED PROJECT CHARGES ACT

Section	
70-1801.	Act, how cited.
70-1802.	Definitions, where found.
70-1803.	Financing costs, defined.
70-1804.	Mandate, defined.
70-1805.	Mandated project, defined.
70-1805.01.	Mandated project bond issuer, defined.
70-1806.	Mandated project bonds, defined.
70-1807.	Mandated project charge, defined.
70-1808.	Mandated project costs, defined.

Section	
70-1809.	Public entity, defined.
70-1810.	Related operating expenses, defined.
70-1811.	Special revenue, defined.
70-1812.	Mandated project charges authorized; resolution of governing body; payment by customers; records required; judicial review authorized; procedure.
70-1813.	Issuance of mandated project bonds; authorized; proceeds; use.
70-1814.	Mandated project charges; use.
70-1815.	Public entity; discretionary actions.
70-1816.	Public entity collecting mandated project charges; billing explanation required.
70-1817.	Act and grants of power; how construed.
70-1818.	Creation of mandated project bond issuer; procedure; board of directors.
70-1819.	Mandated project bond issuer; bond issuance; procedure; use of proceeds; issuer powers; restriction on business activities; powers.

70-1801 Act, how cited.

Sections 70-1801 to 70-1819 shall be known and may be cited as the Public Entities Mandated Project Charges Act.

Source: Laws 2006, LB 548, § 1; Laws 2015, LB141, § 1.

70-1802 Definitions, where found.

For purposes of the Public Entities Mandated Project Charges Act, the definitions found in sections 70-1803 to 70-1811 apply.

Source: Laws 2006, LB 548, § 2; Laws 2015, LB141, § 2.

70-1803 Financing costs, defined.

Financing costs means:

(1) Interest, including, but not limited to, capitalized interest, and redemption premiums that are payable on mandated project bonds;

(2) The cost of retiring or refunding a public entity's existing debt in connection with the issuance of mandated project bonds, but only to the extent the debt was issued for the purposes of financing mandated project costs;

(3) Any cost related to the issuing and servicing of mandated project bonds, whether issued by a public entity or by a mandated project bond issuer, including, but not limited to, servicing fees, trustee fees, legal fees, administrative fees, bond counsel fees, bond placement or underwriting fees, remarketing fees, broker dealer fees, payments under an interest rate swap agreement, financial advisor fees, accounting or engineering report fees, and rating agency fees;

(4) Any expense associated with any bond insurance policy, credit enhancement, or other financial arrangement entered into in connection with the issuance of mandated project bonds; and

(5) The funding of one or more reserve accounts related to mandated project bonds.

Source: Laws 2006, LB 548, § 3; Laws 2015, LB141, § 3.

70-1804 Mandate, defined.

Mandate means a requirement imposed by a statute of the United States or the State of Nebraska, a rule, a regulation, an administrative or a judicial

order, a licensing requirement or condition, any agreement with or requirement of a regional transmission organization, or any consent order or agreement between the United States or the State of Nebraska, or any agency thereof, and a public entity.

Source: Laws 2006, LB 548, § 4.

70-1805 Mandated project, defined.

Mandated project means the construction, retrofitting, rebuilding, acquisition, or installation of any equipment, device, structure, improvement, process, facility, technology, or other property owned, licensed, or controlled by a public entity or operated for the benefit of a public entity through a power participation or purchase agreement, either within or outside the State of Nebraska, and used in connection with a new or existing facility related to electrical power generation, transmission, or distribution, which construction, retrofitting, rebuilding, acquisition, or installation is undertaken to satisfy a mandate, including, but not limited to, any equipment, device, structure, improvement, process, facility, technology, or other property related to environmental pollution control, safety, or useful life extension of an existing plant or facility.

Source: Laws 2006, LB 548, § 5.

70-1805.01 Mandated project bond issuer, defined.

Mandated project bond issuer means an entity created pursuant to section 70-1818.

Source: Laws 2015, LB141, § 4.

70-1806 Mandated project bonds, defined.

Mandated project bonds means bonds, notes, or other evidences of indebtedness that are issued by a public entity or by a mandated project bond issuer, the proceeds of which are used directly or indirectly to pay or reimburse mandated project costs and financing costs and which bonds are secured by and payable from mandated project charges.

Source: Laws 2006, LB 548, § 6; Laws 2015, LB141, § 5.

70-1807 Mandated project charge, defined.

Mandated project charge means a charge paid by customers of a public entity to pay or reimburse the public entity for mandated project costs, including any adjustment of the charge pursuant to subdivision (1)(d) of section 70-1812, or financing costs.

Source: Laws 2006, LB 548, § 7.

70-1808 Mandated project costs, defined.

Mandated project costs means capital costs incurred or to be incurred by a public entity with respect to a mandated project, including the payment of debt service on mandated project bonds, either directly or through a power participation or purchase agreement, and any related operating expenses.

Source: Laws 2006, LB 548, § 8.

70-1809 Public entity, defined.

Public entity means a municipality, a registered group of municipalities, a public power district, a public power and irrigation district, an electric cooperative, an electric membership association, a joint entity formed under the Interlocal Cooperation Act, a joint public agency formed under the Joint Public Agency Act, an agency formed under the Municipal Cooperative Financing Act, or any other governmental entity.

Source: Laws 2006, LB 548, § 9.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

Municipal Cooperative Financing Act, see section 18-2401.

70-1810 Related operating expenses, defined.

Related operating expenses means any necessary operating expenses of a project or system required to be paid from the mandated project charge by an order of a court pursuant to 11 U.S.C. 928(b), as such section existed on January 1, 2006.

Source: Laws 2006, LB 548, § 10.

70-1811 Special revenue, defined.

Special revenue has the definition found in 11 U.S.C. 902(2) as such section existed on January 1, 2006.

Source: Laws 2006, LB 548, § 11.

70-1812 Mandated project charges authorized; resolution of governing body; payment by customers; records required; judicial review authorized; procedure.

(1) A public entity may elect to pay or reimburse mandated project costs and financing costs through the use of mandated project charges. Public entities are hereby authorized to impose and collect mandated project charges as provided in the Public Entities Mandated Project Charges Act. The election to use mandated project charges shall be made and evidenced by the adoption of a resolution of the governing body of the public entity authorizing the mandated project as set forth in the public entity's capital budget. The authorizing resolution shall include the following:

(a) A statement that the project is a mandated project and a description of the mandate that will be addressed by the mandated project;

(b) A statement that the public entity is electing to pay or reimburse the mandated project costs and financing costs with mandated project charges in accordance with the Public Entities Mandated Project Charges Act;

(c) An authorization to add a separate charge to each customer's electric service bill, representing such customer's portion of the mandated project charge;

(d) A description of the financial calculation, formula, or other method that the public entity utilizes to determine the mandated project charges that customers will be required to pay for the mandated project, including a periodic adjustment method, applied at least annually, that shall be utilized by the public entity to correct for any overcollection or undercollection of such mandated project charges or any other adjustment necessary to assure payment

of debt service on mandated project bonds, including, but not limited to, the adjustment of the mandated project charges to pay related operating expenses and any debt service coverage requirement. The financial calculation, formula, or other method, including the periodic adjustment method, established in the authorizing resolution pursuant to this subdivision, and the allocation of mandated project charges to and among its customers, shall be decided solely by the governing body of the public entity and shall be final and conclusive, subject to the procedures set forth in subsection (4) of this section. In no event shall the periodic adjustment method established in the authorizing resolution pursuant to this subdivision be applied less frequently than required by the governing documents of any mandated project bonds issued to finance the mandated project. Once the financial calculation, formula, or other method for determining the mandated project charges, and the periodic adjustment method, have been established in the authorizing resolution and have become final and conclusive as provided in the act, they shall not be changed;

(e) If mandated project bonds are to be issued for the mandated project by the public entity or by a mandated project bond issuer, a requirement that the public entity or mandated project bond issuer shall enter into a servicing agreement for the bonds with a trustee selected by the governing body of the public entity and the public entity or mandated project bond issuer shall act as a servicing agent for purposes of collecting the mandated project charges. Money collected by the public entity or mandated project bond issuer, acting as a servicing agent on behalf of a trustee, shall be held for the exclusive benefit of holders of mandated project bonds; and

(f) If mandated project bonds are to be issued for the mandated project by a mandated project bond issuer created by the public entity, a statement that the public entity elects to have bonds issued by the mandated project bond issuer and that the public entity shall pledge the proceeds of the mandated project charge for the purpose of securing such bonds.

(2) The determination of the governing body that a project is a mandated project shall be final and conclusive, and any mandated project bonds issued and mandated project charges imposed relating to such determination shall be valid and enforceable in accordance with their terms. Mandated project charges shall constitute a vested, presently existing property right. The public entity shall require, in its authorizing resolution with respect to mandated project charges, that so long as any customer obtains electric distribution service from the public entity, the customer shall pay the mandated project charge to the public entity regardless of whether or not the customer obtains electric energy service from the public entity or another energy supplier other than the public entity. All provisions of the authorizing resolution adopted pursuant to this section shall be binding on the public entity and on any successor or assignee of the public entity.

(3) The timely and complete payment of all mandated project charges shall be a condition of receiving electric service for customers of the public entity, and the public entity shall be authorized to use its established collection policies and all rights and remedies provided by the law to enforce payment and collection of the mandated project charges. In no event shall any customer of a public entity be entitled or authorized to withhold payment, in whole or in part, of any mandated project charges for any reason.

(4) The secretary or other duly designated officer of the governing body of the public entity shall prepare and maintain a complete record of all documents submitted to and all oral and written comments made to the governing body in connection with an authorizing resolution adopted pursuant to this section. Within ten days after adoption of an authorizing resolution, an aggrieved party may file a petition for judicial review in the Supreme Court and pay the docket fee established in section 33-103. The petition shall name the public entity as the respondent and shall be served upon the public entity in the manner provided by law for service of process. Within ten business days after service of the petition for judicial review upon the public entity, the secretary or other duly designated officer of the public entity shall prepare and file with the Clerk of the Supreme Court, at the public entity's expense, the record of all documents submitted to and all oral and written comments made to the governing body in connection with the authorizing resolution. Judicial review pursuant to this subsection shall be based solely upon the record submitted by the public entity, and briefs to the court shall be limited to determining whether the financial calculation, formula, or other method adopted by the public entity pursuant to subdivision (1)(d) of this section is a fair, reasonable, and nondiscriminatory allocation to the public entity's customers of the mandated project charges needed to pay for the mandated project. Because the process of judicial review may delay the issuance of mandated project bonds to the financial detriment of customers of the public entity, the Supreme Court shall proceed to hear and determine a petition for judicial review under this section as expeditiously as practicable and shall give the matter precedence over other civil matters on the docket. The authorizing resolution shall become final and conclusive if there is no petition for judicial review filed within the time set forth in this subsection or upon the effective date of the court's decision in favor of the public entity. If the court rules against the public entity on a petition for judicial review under this subsection, the public entity's authorizing resolution shall be void and of no further force or effect.

For purposes of this subsection, aggrieved party means a retail customer of the public entity that receives electric service pursuant to a published rate schedule.

Source: Laws 2006, LB 548, § 12; Laws 2015, LB141, § 6.

70-1813 Issuance of mandated project bonds; authorized; proceeds; use.

(1) A public entity has the authority to issue mandated project bonds, including refunding bonds, in one or more series. A public entity also may create a mandated project bond issuer pursuant to section 70-1818 to issue mandated project bonds. Mandated project charges to which the public entity may at any time be entitled shall be pledged, without any necessity for specific authorization of the pledge by the public entity, to the mandated project bonds. Each such series of mandated project bonds shall be secured by and payable from a first lien on mandated project charges pledged for such purpose. Any separate consensual lien or security interest shall be created in accordance with and governed by the Nebraska Governmental Unit Security Interest Act. The proceeds of such bonds shall be applied exclusively to payment of mandated project costs and financing costs and, in the case of proceeds of refunding bonds, the retirement or defeasance of mandated project bonds.

(2) The public entity and any successor or assignee of the public entity shall be obligated to impose and collect the mandated project charges in amounts sufficient to pay debt service on the mandated project bonds as due. The pledge of mandated project charges shall be irrevocable, and the state, the public entity, or any successor or assignee of the public entity may not reduce, impair, or otherwise adjust mandated project charges, except that the public entity and any successor or assignee thereof shall implement the periodic adjustment method established by the authorizing resolution pursuant to subdivision (1)(d) of section 70-1812. Revenue from mandated project charges shall be deemed special revenue and shall not constitute revenue of the public entity for purposes of any pledge of revenue, receipts, or other income that such public entity has made or will make for the security of debt other than the mandated project bonds to which the revenue from the mandated project charges is expressly pledged.

Source: Laws 2006, LB 548, § 13; Laws 2015, LB141, § 7.

Cross References

Nebraska Governmental Unit Security Interest Act, see section 10-1101.

70-1814 Mandated project charges; use.

Mandated project charges shall be applied exclusively for the purpose of paying mandated project costs, including any adjustments of such charges pursuant to subdivision (1)(d) of section 70-1812, and financing costs.

Source: Laws 2006, LB 548, § 14.

70-1815 Public entity; discretionary actions.

A public entity undertaking a mandated project is not required to pay or reimburse the costs of the mandated project with mandated project charges, and such public entity is not required to issue mandated project bonds. The use of mandated project charges and issuance of mandated project bonds are elective actions wholly within the discretion of the public entity.

Source: Laws 2006, LB 548, § 15.

70-1816 Public entity collecting mandated project charges; billing explanation required.

A public entity collecting mandated project charges shall annually provide its customers with a concise explanation of mandated project charges billed to customers. Such explanation may be by billing insert, web site information, or other appropriate means.

Source: Laws 2006, LB 548, § 16.

70-1817 Act and grants of power; how construed.

The Public Entities Mandated Project Charges Act and all grants of power and authority in the act shall be liberally construed to effectuate their purpose, and all incidental powers necessary to carry into effect the provisions of the act are expressly granted to and conferred upon public entities.

Source: Laws 2006, LB 548, § 17.

70-1818 Creation of mandated project bond issuer; procedure; board of directors.

A public entity may create, by a duly adopted resolution of its governing body, a mandated project bond issuer. A mandated project bond issuer is a body politic and corporate, not an agency of the state but an independent instrumentality exercising essential public functions, and has the powers and duties set forth in section 70-1819. The chairperson of the governing body of the creating public entity shall appoint a three-person board of directors from among the governing body's members, and such board of directors shall govern the mandated project bond issuer.

Source: Laws 2015, LB141, § 8.

70-1819 Mandated project bond issuer; bond issuance; procedure; use of proceeds; issuer powers; restriction on business activities; powers.

(1) The mandated project bond issuer may issue mandated project bonds, including refunding bonds, in one or more series, as contemplated by a resolution of the public entity adopted in accordance with section 70-1812. The mandated project bond issuer shall comply with any resolution issued by the public entity in accordance with such section. Mandated project charges to which the public entity may at any time be entitled shall be pledged, without any necessity for specific authorization of the pledge by the public entity, to the mandated project bonds issued by the mandated project bond issuer pursuant to this section. Each such series of mandated project bonds shall be secured by and payable from a first lien on mandated project charges pledged for such purpose. Any separate consensual lien or security interest shall be created in accordance with and governed by the Nebraska Governmental Unit Security Interest Act. The proceeds of such bonds shall be applied exclusively to payment of mandated project costs and financing costs and, in the case of proceeds of refunding bonds, the retirement or defeasance of mandated project bonds.

(2) The mandated project bond issuer may:

(a) Contract for servicing of mandated project bonds and for administrative services; and

(b) Accept the pledge of mandated project charges from the public entity pursuant to section 70-1812 and pledge the mandated project charges to secure the mandated project bonds and the payment of financing costs.

(3) So long as any mandated project bonds remain outstanding, the mandated project bond issuer may not merge or consolidate, directly or indirectly, with any person or entity. Additionally, the mandated project bond issuer shall not incur, guarantee, or otherwise become obligated to pay any debt or other obligations other than the mandated project bonds and financing costs unless otherwise permitted by the resolution of the public entity adopted pursuant to section 70-1812. The mandated project bond issuer shall keep its assets and liabilities separate and distinct from those of any other entity.

(4) The mandated project bond issuer may not be a debtor under Chapter 9 of Title 11 of the United States Code or any other provision of such title. No governmental officer or organization may authorize, whether by executive order or otherwise, a mandated project bond issuer to be a debtor under Chapter 9 of Title 11 of the United States Code or any other provision of such title. Until at least one year and one day after all mandated project bonds issued by a restructuring bond issuer have ceased to be outstanding and all unpaid financing costs have been paid, the state shall not limit or alter the denial of

authority to the mandated project bond issuer to be a debtor under Chapter 9 of Title 11 of the United States Code or any other provision of such title.

(5) The mandated project bond issuer may not engage in other business activities, except that in connection with the powers specified in this section, as a financing entity the mandated project bond issuer may:

(a) Have perpetual succession as a body politic and corporate and an independent instrumentality exercising essential public functions;

(b) Adopt, amend, and repeal bylaws, rules, and regulations not inconsistent with the Public Entities Mandated Project Charges Act to regulate its affairs, to carry into effect its powers and purposes, and to conduct its business;

(c) Sue and be sued in its own name;

(d) Have an official seal and alter it at will;

(e) Maintain an office at such place or places within the state as it may designate;

(f) Make and execute contracts and all other instruments as necessary or convenient for the performance of its duties and the exercise of its powers and functions under the act;

(g) Establish and maintain such accounts, reserves, and special funds, to be held in trust or otherwise as may be required by a resolution of the public entity pursuant to section 70-1812 or by agreements made in connection with the mandated project bonds or any agreement between itself and third parties;

(h) Employ officers and employees, prescribe their qualifications and duties, and fix their compensation, and may engage the services of and compensate attorneys, accountants, and such other advisors, consultants, and agents as may be necessary in its judgment to fulfill its duties under the act;

(i) Obtain insurance against any loss in connection with its business, property, and other assets in such amounts and from such insurers as it deems advisable;

(j) Invest funds in its custody pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act;

(k) Receive and accept from any source aid or contributions of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of the Public Entities Mandated Project Charges Act, subject to the conditions upon which the grants or contributions are made, including gifts or grants from any department, agency, or instrumentality of the United States; and

(l) Sell and convey any real or personal property and make such order respecting the same as it deems conducive to the best interest of the mandated project bond issuer.

Source: Laws 2015, LB141, § 9.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska Governmental Unit Security Interest Act, see section 10-1101.

Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 19

RURAL COMMUNITY-BASED ENERGY DEVELOPMENT ACT

Section

- 70-1901. Act, how cited.
70-1902. Legislative intent.
70-1903. Terms, defined.
70-1904. C-BED project developer; electric supplier; negotiation; power purchase agreement; development of project; restriction on transfer; eligibility for net energy billing; approval or certification; notice of change in ownership.
70-1905. Electric supplier; duties.
70-1906. Construction of new renewable generation facilities; electric supplier; governing body; duties.
70-1907. C-BED project developer; provide notices.
70-1908. Sections; how construed.
70-1909. Electric supplier; limit on eminent domain.

70-1901 Act, how cited.

Sections 70-1901 to 70-1909 shall be known and may be cited as the Rural Community-Based Energy Development Act.

Source: Laws 2007, LB629, § 1.

70-1902 Legislative intent.

It is the intent of the Legislature to create new rural economic development opportunities through rural community-based energy development.

Source: Laws 2007, LB629, § 2.

70-1903 Terms, defined.

For purposes of the Rural Community-Based Energy Development Act:

(1) C-BED project or community-based energy development project means a new energy generation project using wind, solar, biomass, or landfill gas as the fuel source that:

(a) Has at least twenty-five percent of the gross power purchase agreement payments flowing to the qualified owner or owners or as payments to the local community; and

(b) Has a resolution of support or zoning approval adopted:

(i) By the county board of each county in which the C-BED project is to be located and which has adopted zoning regulations that require planning commission, county board, or county commission approval for the C-BED project; or

(ii) By the tribal council for a C-BED project located within the boundaries of an Indian reservation;

(2) Electric supplier means a public power district, a public power and irrigation district, an individual municipality, a registered group of municipalities, an electric membership association, or a cooperative, unless the context requires a different meaning;

(3) Gross power purchase agreement payments means the total amount of payments during the first twenty years of the agreement;

(4) Payments to the local community include, but are not limited to:

(a) Lease and easement payments to property owners made as part of a C-BED project;

(b) Contract payments for concrete, steel, gravel, towers, turbines, blades, wire, or engineering, procurement, construction, geotechnical, environmental, meteorological, or legal services or payments for other components, equipment, materials, or services that are necessary to permit or construct the C-BED project and that are provided by a company that has been organized or incorporated in Nebraska under Nebraska law and has employed at least five Nebraska residents for at least eighteen months prior to the date of the project application for certification as a C-BED project; and

(c) Payments that are for physical parts, materials, or components that are manufactured, assembled, or fabricated in Nebraska and that are not described in subdivision (a) or (b) of this subdivision.

Such payments need not be made directly from power purchase agreement revenue and may be made from other funds in advance of receiving power purchase agreement revenue; and

(5) Qualified owner means:

(a) A Nebraska resident;

(b) A limited liability company that is organized under the Nebraska Uniform Limited Liability Company Act and that is made up of members who are Nebraska residents;

(c) A Nebraska nonprofit corporation organized under the Nebraska Nonprofit Corporation Act;

(d) A public power district, a public power and irrigation district, a municipality, a registered group of municipalities, an electric cooperative, or an electric membership association, except that qualified ownership in a single C-BED project is limited to no more than:

(i) Fifteen percent either directly or indirectly by a single electric supplier; and

(ii) A combined total of twenty-five percent either directly or indirectly by multiple electric suppliers;

(e) A tribal council;

(f) A domestic corporation organized in Nebraska under the Business Corporation Act or the Nebraska Model Business Corporation Act and domiciled in Nebraska; or

(g) A cooperative corporation organized under sections 21-1301 to 21-1306 and domiciled in Nebraska.

Source: Laws 2007, LB629, § 3; Laws 2008, LB916, § 1; Laws 2009, LB561, § 3; Laws 2010, LB888, § 102; Laws 2013, LB283, § 4; Laws 2014, LB402, § 1; Laws 2015, LB35, § 11; Laws 2015, LB412, § 1; Laws 2016, LB736, § 1; Laws 2016, LB824, § 13.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

Nebraska Nonprofit Corporation Act, see section 21-1901.

Nebraska Uniform Limited Liability Company Act, see section 21-101.

70-1904 C-BED project developer; electric supplier; negotiation; power purchase agreement; development of project; restriction on transfer; eligibility for net energy billing; approval or certification; notice of change in ownership.

(1) A C-BED project developer and an electric supplier are authorized to negotiate in good faith mutually agreeable power purchase agreement terms.

(2) A qualified owner or any combination of qualified owners may develop a C-BED project with an equity partner that is not a qualified owner.

(3) Except for an inherited interest, the transfer of the interest of a qualified owner in a C-BED project to any person other than another qualified owner or other qualified owners is prohibited during the initial ten years of the power purchase agreement.

(4) A C-BED project that is operating under a power purchase agreement is not eligible for any applicable net energy billing.

(5) A C-BED project shall be subject to approval by the Nebraska Power Review Board in accordance with Chapter 70, article 10, or shall receive certification as a qualifying facility in accordance with the federal Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 et seq., with written notice of such certification provided to the Nebraska Power Review Board.

(6) A C-BED project developer shall notify any electric supplier that has a power purchase agreement with the C-BED project if there is a change in project ownership which makes the project no longer eligible as a C-BED project.

Source: Laws 2007, LB629, § 4; Laws 2008, LB916, § 2; Laws 2009, LB561, § 4; Laws 2014, LB402, § 2; Laws 2016, LB736, § 2.

70-1905 Electric supplier; duties.

An electric supplier shall:

(1) Consider mechanisms to encourage the aggregation of C-BED projects located in the same general geographical area; and

(2) Require any qualified owner to provide sufficient security to assure performance under the power purchase agreement.

Source: Laws 2007, LB629, § 5; Laws 2008, LB916, § 3; Laws 2016, LB736, § 3.

70-1906 Construction of new renewable generation facilities; electric supplier; governing body; duties.

The governing body of an electric supplier that has determined a need to construct new renewable generation facilities shall take reasonable steps to determine if one or more C-BED projects are available and are technically, economically, and operationally feasible to provide some or all of the identified generation need.

Source: Laws 2007, LB629, § 6; Laws 2016, LB736, § 4.

70-1907 C-BED project developer; provide notices.

To the extent feasible, a C-BED project developer shall provide, in writing, notice of incentives pursuant to the Rural Community-Based Energy Development Act for local ownership and local participation in a C-BED project to each property owner on whose property a turbine will be located and to the elected

governing body of each municipality or political subdivision in which a turbine will be located.

Source: Laws 2007, LB629, § 7; Laws 2008, LB916, § 4; Laws 2015, LB412, § 2.

70-1908 Sections; how construed.

Nothing in sections 70-1901 to 70-1907 shall be construed to obligate an electric supplier to enter into a power purchase agreement under a C-BED project.

Source: Laws 2007, LB629, § 8; Laws 2016, LB736, § 5.

70-1909 Electric supplier; limit on eminent domain.

An electric supplier as defined in section 70-1001.01 may agree to limit its exercise of the power of eminent domain to acquire a C-BED project and any related facilities if such electric supplier enters into a contract to purchase output from such C-BED project for a term of ten years or more.

Source: Laws 2007, LB629, § 9; Laws 2014, LB402, § 3.

ARTICLE 20

NET METERING

Section

70-2001. Legislative findings.

70-2002. Terms, defined.

70-2003. Local distribution utility; interconnect qualified facility of customer-generator; interconnection agreement; requirements; powers and duties.

70-2004. Customer-generator; inspection required; notice to local distribution utility; ownership of credits.

70-2005. Annual net metering report; contents.

70-2001 Legislative findings.

The Legislature finds that it is in the public interest to:

- (1) Encourage customer-owned renewable energy resources;
- (2) Stimulate the economic growth of this state;
- (3) Encourage diversification of the energy resources used in this state; and
- (4) Maintain low-cost, reliable electric service.

Source: Laws 2009, LB436, § 1.

70-2002 Terms, defined.

For purposes of sections 70-2001 to 70-2005:

(1) Customer-generator means an end-use electricity customer that generates electricity on the customer's side of the meter from a qualified facility;

(2) Interconnection agreement means an agreement between a local distribution utility and a customer-generator that establishes the financial, interconnection, safety, performance, and reliability requirements relating to the installation and operation of a qualified facility in accordance with the standards prescribed in sections 70-2001 to 70-2005;

(3) Local distribution system means the equipment and facilities used for the distribution of electric energy to the end-use electricity customer;

(4) Local distribution utility means the owner or operator of the local distribution system;

(5) Net excess generation means the net amount of energy, if any, by which the output of a qualified facility exceeds a customer-generator's total electricity requirements during a billing period;

(6) Net metering means a system of metering electricity in which a local distribution utility:

(a) Credits a customer-generator at the applicable retail rate for each kilowatt-hour produced by a qualified facility during a billing period up to the total of the customer-generator's electricity requirements during that billing period. A customer-generator may be charged a minimum monthly fee that is the same as other noncustomer-generators in the same rate class but shall not be charged any additional standby, capacity, demand, interconnection, or other fee or charge; and

(b) Compensates the customer-generator for net excess generation during the billing period at a rate equal to the local distribution utility's avoided cost of electric supply over the billing period. The monetary credits shall be applied to the bills of the customer-generator for the preceding billing period and shall offset the cost of energy owed by the customer-generator. If the energy portion of the customer-generator's bill is less than zero in any month, monetary credits shall be carried over to future bills of the customer-generator until the balance is zero. At the end of each annualized period, any excess monetary credits shall be paid out to coincide with the final bill of that period; and

(7) Qualified facility means a facility for the production of electrical energy that:

(a) Uses as its energy source either methane, wind, solar resources, biomass, hydropower resources, or geothermal resources;

(b) Is controlled by the customer-generator and is located on premises owned, leased, or otherwise controlled by the customer-generator;

(c) Interconnects and operates in parallel with the local distribution system;

(d) Is intended to meet or offset the customer-generator's requirements for electricity;

(e) Is not intended to offset or provide credits for electricity consumption at another location owned, operated, leased, or otherwise controlled by the customer-generator or for any other customer;

(f) Has a rated capacity at or below twenty-five kilowatts;

(g) Meets all applicable safety, performance, interconnection, and reliability standards established by the National Electrical Code filed with the Secretary of State and adopted by the State Electrical Board under subdivision (5) of section 81-2104, the National Electrical Safety Code, the Institute of Electrical and Electronics Engineers, and the Underwriters Laboratories, Inc.; and

(h) Is equipped to automatically isolate the qualified facility from the electrical system in the event of an electrical power outage or other conditions where the line is de-energized.

Source: Laws 2009, LB436, § 2.

70-2003 Local distribution utility; interconnect qualified facility of customer-generator; interconnection agreement; requirements; powers and duties.

(1) A local distribution utility shall interconnect the qualified facility of any customer-generator that enters into an interconnection agreement with the local distribution utility, satisfies the requirements for a qualified facility and all other requirements of sections 70-2001 to 70-2005, and pays for costs incurred by the local distribution utility for equipment or services required for interconnection that would not be necessary if the qualified facility were not interconnected to the local distribution system, except as provided in subsection (2) of this section and as may be provided for in the utility's aid in construction policy.

(2) A local distribution utility shall provide at no additional cost to any customer-generator with a qualified facility a metering system that is capable of measuring the flow of electricity in both directions and may be accomplished through use of a single, bidirectional electric revenue meter that has only a single register for billing purposes, a smart metering system, or another meter configuration that can easily be read by the customer-generator.

(3) A local distribution utility may, at its own expense, install additional monitoring equipment to separately monitor the flow of electricity in each direction as may be necessary to accomplish the reporting requirements of sections 70-2001 to 70-2005.

(4) Subject to the requirements of sections 70-2001 to 70-2005 and the interconnection agreement, a local distribution utility shall provide net metering to any customer-generator with a qualified facility. The local distribution utility shall allow a customer-generator's retail electricity consumption to be offset by a qualified facility that is interconnected with the local distribution system. A qualified facility's net excess generation during a billing period, if any, shall be determined by the local distribution utility in accordance with section 70-2002 and shall be credited to the customer-generator at a rate equal to the local distribution utility's avoided cost of electricity supply during the billing period, and the monetary credits shall be carried forward from billing period to billing period and credited against the customer-generator's retail electric bills in subsequent billing periods. Any excess monetary credits shall be paid out to coincide with the final bill at the end of each annualized period or within sixty days after the date the customer-generator terminates its retail service.

(5) A local distribution utility shall not be required to provide net metering to additional customer-generators, regardless of the output of the proposed generation unit, after the date during a calendar year on which the total generating capacity of all customer-generators using net metering served by such local distribution utility is equal to or exceeds one percent of the capacity necessary to meet the local distribution utility's average aggregate customer monthly peak demand forecast for that calendar year.

(6) No local distribution utility may require a customer-generator whose qualified facility meets the standards established under sections 70-2001 to 70-2005 to:

(a) Comply with additional safety or performance standards or pay additional charges for equipment or services for interconnection that are additional to those necessary to meet the standards established under sections 70-2001 to 70-2005;

- (b) Perform or pay for additional tests; or
- (c) Purchase additional liability insurance if all safety and interconnection requirements are met.

(7) Nothing in sections 70-2001 to 70-2005 prevents a local distribution utility from entering into other arrangements with customers desiring to install electric generating equipment or from providing net metering to customer-generators having renewable generation units with a rated capacity above twenty-five kilowatts.

Source: Laws 2009, LB436, § 3.

70-2004 Customer-generator; inspection required; notice to local distribution utility; ownership of credits.

(1) A customer-generator shall request an inspection from the State Electrical Division pursuant to subsection (1) of section 81-2124 or subsection (1) of section 81-2125 and shall provide documentation of the completed inspection to the local distribution utility prior to interconnection with the local distribution system.

(2) A customer-generator is responsible for notifying the local distribution utility of its intent to install a qualified facility at least sixty days prior to its installation and is responsible for all costs associated with the qualified facility.

(3) A local distribution utility shall not be required to interconnect with a qualified facility that fails to meet or maintain the local distribution utility's requirements for safety, reliability, and interconnection.

(4) A customer-generator owns the renewable energy credits of the electricity its qualified facility generates.

Source: Laws 2009, LB436, § 4.

70-2005 Annual net metering report; contents.

Beginning March 1, 2010, and on each March 1 thereafter, each local distribution utility shall produce and publish on its web site, or if no web site is available, in its main office, and provide to the Nebraska Power Review Board an annual net metering report that shall include the following information:

- (1) The total number of qualified facilities;
 - (2) The total estimated rated generating capacity of qualified facilities;
 - (3) The total estimated net kilowatt-hours received from customer-generators;
- and
- (4) The total estimated amount of energy produced by the customer-generators.

Source: Laws 2009, LB436, § 5.

ARTICLE 21

PUBLIC POWER INFRASTRUCTURE PROTECTION ACT

Section

- 70-2101. Act, how cited.
- 70-2102. Legislative findings.
- 70-2103. Public power supplier, defined.
- 70-2104. Prohibited acts; penalty.
- 70-2105. Nuclear electrical generating facility; nuclear fuel; prohibited acts; penalty.

70-2101 Act, how cited.

Sections 70-2101 to 70-2105 shall be known and may be cited as the Public Power Infrastructure Protection Act.

Source: Laws 2009, LB238, § 3.

70-2102 Legislative findings.

The Legislature finds that the public has an interest in the uninterrupted generation and transmission of electricity by public power suppliers in this state. The Legislature finds that it is in the public interest to protect facilities and infrastructure used in the generation, transmission, and distribution of electricity from damage as a result of knowingly unlawful and malicious acts.

Source: Laws 2009, LB238, § 4.

70-2103 Public power supplier, defined.

For purposes of the Public Power Infrastructure Protection Act, public power supplier means a public power district organized under Chapter 70, article 6, a public power and irrigation district, a municipality, a registered group of municipalities, an electric cooperative, an electric membership association, a joint entity formed under the Interlocal Cooperation Act, a joint public agency formed under the Joint Public Agency Act, an agency formed under the Municipal Cooperative Financing Act, or any other governmental entity providing electric service.

Source: Laws 2009, LB238, § 5.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

Municipal Cooperative Financing Act, see section 18-2401.

70-2104 Prohibited acts; penalty.

A person shall be guilty of a Class IV felony if he or she willfully and maliciously:

(1) Damages, injures, or destroys or attempts to damage, injure, or destroy:

(a) Any machine, appliance, facility, or apparatus owned by a public power supplier that is used for generating electricity; or

(b) Any facility or electric wire owned by a public power supplier that is used for the purpose of conducting, transforming, transmitting, or distributing electricity or any pole, bracket, insulator, or other appliance or apparatus owned by a public power supplier that supports or carries any electric wire owned by a public power supplier; or

(2) Does any act for the purpose of interrupting the generation, transmission, or distribution of electricity by a public power supplier.

Source: Laws 2009, LB238, § 6.

70-2105 Nuclear electrical generating facility; nuclear fuel; prohibited acts; penalty.

(1) A person shall be guilty of a Class II felony if he or she willfully and maliciously (a) destroys or causes or attempts to cause damage or loss to a

nuclear electrical generating facility or its components, including the electrical transmission lines or switching equipment used in direct connection with such a facility, or (b) takes, steals and carries away, or removes, alters, or otherwise renders unusable or unsafe the spent or unspent nuclear fuel used or stored in a nuclear electrical generating facility or nuclear storage facility.

(2) This section shall be construed to cover acts and omissions of persons employed at such nuclear facilities, persons otherwise rightfully upon the premises of such nuclear facilities, and all other persons. This section does not apply to acts or omissions carried out in accordance with official rules or directives relating to plant operation or within the scope of responsibility of judgment delegated to persons employed at such nuclear facilities.

Source: Laws 2009, LB238, § 7.